



LAW COMMISSION OF INDIA

ELEVENTH REPORT

सत्यमेव जयते

NEGOTIABLE INSTRUMENTS ACT,

GOVERNMENT OF INDIA ● MINISTRY

Law-1

CHAIRMAN,
LAW COMMISSION.

New Delhi,
September 26, 1958

Shri Ashok Kumar Sen,
Minister of Law,
Government of India,
New Delhi.

My dear Minister,

I have great pleasure in forwarding herewith the Eleventh Report of the Law Commission on the Negotiable Instruments Act.

2. At its first meeting held on the 17th September, 1955, the Commission decided to take up the revision of the Negotiable Instruments Act and entrusted the task to a Committee consisting of Shri D. Narasa Raju and Shri S. M. Sikri.

3. It was subsequently decided that Shri P. Satyanarayana Rao, the senior Member of the Section of the Commission dealing with Statute Law Revision should assist the Committee in drawing its Report. The consideration of the subject was initiated by Shri Rao who formulated a scheme for the revision of the Act. The principles underlying the scheme were discussed at the meetings of the Statute Revision Section held on the 22nd September, 1956 and 21st October, 1956. At the meeting held on the 22nd September, 1956, it was also decided to include Shri V. K. T. Chari in the Committee on the Negotiable Instruments Act in view of Shri Narasa Raju's ill health. A draft Report prepared on the basis of the scheme was circulated to all Members and their views invited thereon. These views together with the draft Report were discussed at the meetings of the Statute Revision Section held on the 26th January, 1958 and the 29th March, 1958. Some of the suggestions made by Members at these meetings were accepted and it was left to the Chairman to finally settle the Report in the light of the discussion.

4. The Commission wishes to acknowledge the services rendered by its Joint Secretary, Shri D. Basu, in connection with the preparation of the Report.

Yours sincerely,
M. C. SETALVAD.



REPORT
ON THE
NEGOTIABLE INSTRUMENTS ACT
CONTENTS

Paragraphs	PAGES
1—3 History of the legislation	1-2
4 Materials on which revision is made	2
5—20 Suggestions of Chambers and Bankers' Associations considered	2—13
21—33 Scheme adopted for revision and major changes proposed .	14—19
34—178 Examination of the provisions of the Act, indicating the changes required	19—71
APPENDICES	
Appendix I Proposals as inserted in the body of the existing Act . . .	72—130
Appendix II Comparative Tables—	
Table A—Showing the provisions in the existing Act and the corresponding provisions in Appendix I	131—135
Table B—Showing the provisions in Appendix I and the corresponding provisions in the existing Act, the Bills of Exchange Act, and the Uniform Negotiable Instruments Law	136—142
Table C—Showing the contents of the sections in Appendix I with the corresponding sections in the existing Act .	143—150
Appendix III Suggestions regarding other Acts	151
Appendix IV Commercial bodies and associations who were addressed for suggestions	152—155
Appendix V Commercial bodies and associations who gave their views in writing	156

REPORT ON THE NEGOTIABLE INSTRUMENTS ACT, 1881

1. "Mercantile usage is the raw material, mercantile law is the manufactured article", said Sir McKenzie Chalmers¹ while speaking about the state of the English law before the Bills of Exchange Act, 1882. This statement brings out clearly the process of evolution of mercantile law which includes the law of negotiable instruments. The mercantile community found in such instruments an easy mode of payment of money by the endorsement and delivery or by mere delivery of these instruments. With the expansion of trade and commerce, negotiable instruments have assumed international importance.

History of
the Legis-
lation.

2. An attempt at the codification of mercantile usages was made in France as early as 1818 and the French Commercial Code was later adopted as a model by other countries on the Continent. In England, the movement for codification was not started till 1880 when Sir McKenzie Chalmers drafted a bill on the subject. This was enacted as the Bills of Exchange Act, 1882. In India, an effort in the same direction was made earlier, in 1867, when the (third) Indian Law Commission prepared a bill. But, for various reasons it was kept in cold storage for a number of years. In 1879 Mr. Arthur Phillips, the then Law Secretary and a member of the Calcutta Bar, redrafted the bill. Criticisms were invited on it from banks, chambers of commerce and leading merchants. This bill, after passing through Select Committees more than once, was again referred to a new Law Commission in 1879. The recommendations of the Commission were considered by another Select Committee and eventually the bill, in a modified form, became the Negotiable Instruments Act, 1881.

3. The principal source for codification of this law both in England and in India was the English common law of

1. Introduction to the First Ed. of Chalmers' Negotiable Instruments, Act, p. 9.

contracts as modified by the law merchant. But, curiously, there has been a considerable divergence, whether intended or not, between the two Acts though the raw material for both was the same. The arrangement of the sections in the English Act is more logical and the principles enunciated therein are more comprehensive than in the Indian Act.

Materials
for revision.

4. The Indian Negotiable Instruments Act has been on the Statute Book for over 75 years and except for amendments made now and then, the question of revising the Act as a whole has never been raised before. In revising the Act we have considered the provisions of the English Bills of Exchange Act, the Uniform Negotiable Instruments Law¹ of the U.S.A., the decisions under the English and Indian Acts and the suggestions made by the Chambers of Commerce, Bankers' Associations and members of the public.

Suggestions
of Cham-
bers and
Bankers'
Associations
considered.

5. Immediately after the work was taken up by us a press note was issued inviting suggestions for reform from the public. Apart from this, important commercial bodies, such as the Chambers of Commerce² as well as the State Governments were addressed individually for their suggestions. Some of these commercial bodies³ offered their views in writing. Besides, Shri G. N. Das, Member (assisted by Joint Secretary, Shri Basu) had discussions with the representatives of the Chambers at Calcutta, while Shri P. Satyanarayana Rao and Shri V. K. Thiruvengkatachari, Members, had discussions with the representatives of similar Associations at Madras, on the basis of their memoranda received earlier. Two Associations of Bombay sent their memoranda subsequent to the Commission's visit to that place. The Bombay Shroffs' Association sent a deputation to us and we heard their representatives on certain questions. We desire to express our thanks for the valuable suggestions made by these Chambers of Commerce and Associations. The major suggestions made by them will be considered presently; the rest will be considered in their appropriate places when dealing with the relevant provisions of the Act.

1. Drafted by the National Conference of Commissioners on Uniform State Law in 1896 and since revised from time to time.

2. *Vide* Appendix IV.

3. *Vide* Appendix V.

6. It has to be mentioned at the outset that the title "Negotiable Instruments Act" is somewhat misleading as it conveys the idea, at first sight, that it is a comprehensive enactment relating to all negotiable instruments whether recognised as such by law or by usage or custom. A perusal of section 13 of the Act shows, however, that the Act is confined only to three specific types of negotiable instruments, viz., promissory note, bill of exchange and cheque. The codified law in India relating to negotiable instruments thus deals, as in England, only with the aforesaid three instruments.

7. But an instrument for securing payment of money may become negotiable not only by statute but also by custom or usage of the mercantile community. The principal advantages of a negotiable instrument under the Act are that the property in the instrument and all rights under it pass, by operation of law, to a *bona fide* transferee for value by mere delivery or by endorsement and delivery, without the necessity of the complicated procedure of executing a deed of assignment and that the rights of the transferee are not in any manner affected by any defect in the title of the transferor. It has been urged before us that the foregoing and other statutory benefits conferred by the Act should be extended to two other classes of instruments viz., (1) indigenous instruments known as *hundis* and (2) instruments other than promissory notes, bills of exchange and cheques which are, for the time being, recognised by usage or custom as negotiable. Since this suggestion was made persistently by important commercial bodies, it has to be discussed at the outset in order to clear the ground.

Suggestions that hundis and other negotiable instruments should be included.

8. Section 1 of the Act now saves usages in respect of all instruments in an oriental language unless an intention is expressed in any such instrument that it would be governed by the provisions of the Act. The section clearly indicates that an instrument, even if it be within the definition of a promissory note, bill of exchange or cheque will, if written in an oriental language, be governed by usage, if any, applicable to it and not by the provisions of the Act.

Hundis which conform to the Act.

Reference may be made to the case of *Jambu Chetty & another v. Palaniappa Chettiar*, where the Madras High Court, proceeding on the assumption that the hundi in question in that case was either a bill or a note, observed—

“If any local usage relating to bills and notes in an oriental language—the operation of which usage is saved by section 1, though such usage may be at variance with the Act—be relied upon, such usage should be alleged and established by the party relying upon it.”

The Court thus took the view that if a contrary usage were established, an instrument in an oriental language, even though it conformed to the requirements of a negotiable instrument as laid down in the Act, would be governed not by the provisions of the Act, but by such usage; but that in the absence of proof of any such usage, such instrument (though in an oriental language) would be governed by the provisions of the Act. This view seems to have recently been followed by the Hyderabad High Court¹.

In *Champaklal v. Keshrichand*², Mirza J. of the Bombay High Court observed—

“Supposing that this hundi were not a Shahjog hundi and were an ordinary hundi to which the Negotiable Instruments Act applied”

This observation also suggests the view that an ‘ordinary’ hundi which conforms to the requirements of a negotiable instrument under the Act would normally be governed by its provisions.

The two decisions in *Pannalal v. Hargopal*³ and *Surajmal v. Kashi Prasad*⁴, also illustrate the above proposition. Both related to a hundi of the nature of a bill of exchange which required acceptance. In the former case³ the Lahore High Court held that a usage of oral acceptance in Delhi having

1. *Chandulal v. Ramchander*, A.I.R. 1955 N.U.C. 2363 (Hyd.).

2. (1925) 50 Bom. 765 (781).

3. I.L.R. (1919) 1 Lah. 80.

4. A.I.R. 1933 Nag. 389.

been established by the evidence, such acceptance was valid in Delhi. In the Nagpur case¹, on the other hand, there was no allegation or proof of any usage in Bombay contrary to the provisions of section 7 and so it was held that acceptance must be in writing as required by section 7 of the Act.

9. We are, however, of the opinion that in cases of this kind, any usage contrary to the provisions of the Act should not be allowed to be established. There is no reason to exclude the applicability of any of the provisions of the Act to an instrument (in whatever language it may be written) which fulfils the requirements of one or other of the instruments dealt with under the Act. Thus, if a hundi, in spite of the name that is given to it in the document by the parties, comes within the definition of a promissory note, or a bill of exchange or a cheque, it should be governed by the provisions of the Act alone, notwithstanding any usage or custom applicable to it which may be at variance with such provisions. To this extent, we think, indigenous instruments should be brought within the scope of this Act. With this end in view we have proposed a new provision² in place of the existing saving clause in section 1. We would also like to point out that with the increasing emphasis on the use of Indian language a growing number of negotiable instruments will come to be made in these languages and it is necessary that these instruments should be brought within the ambit of the provisions of the Act. Many of the commercial bodies consulted by us have expressed agreement with our proposal.

Language should not exclude an instrument if it comes within the definition of the Act.

10. As regards hundis which do not conform to the definition of any of the negotiable instruments dealt with in the Act, a different problem arises.

Other hundis cannot be brought under the Act of abolished.

It is clear that no provision of the Act as it stands can possibly be applied to such hundis³ and that they must be governed exclusively by usage unless, of course, the provisions of the Act are imported by the agreement of the parties themselves.

1. A.I.R. 1933 Nag. 389.

2. S. 3 of App. I.

3. *Champaklal v. Keshrichand*, (1925) 50 Bom. 765 (781) ; *Raja Komalsingh V. Rambharosa*, A.I.R. 1943 Nag. 99 (Shahjog hundi).

11. It may be recalled that the framers of the Act, though they did not desire to abolish the local usages suddenly, cherished the desire that the introduction of the Act which imported the English law would facilitate the assimilation of the practice of the local merchants to that of the English merchants. When the Bill was before the Select Committee the Chief Justice of Bengal and the Bank of Bengal urged that the provisions of the Act should be made applicable to hundis also in order to bring about uniformity in the law and to avoid uncertainty. The Government of the Punjab, however, was for the total exclusion of hundis from the Bill. A *via media* was adopted in the Act by providing that usages might be excluded by expressing in the instrument an intention to be governed by the provisions of the Act. It was hoped that in course of time the mercantile community would realise the necessity of uniform rules governing all instruments and gradually choose to be governed by the provisions of the Act. In the words of the Select Committee of 1879 on the Negotiable Instruments Bill, "the effect of the Bill will be to induce the native mercantile community gradually to discard them for the corresponding rules contained in the Bill. The desirable uniformity of mercantile usage will thus be brought about without any risk of causing hardship to Native bankers and merchants. How long this change will take, it is of course impossible to prophesy". But though over three quarters of a century have passed the practice of the local mercantile community has belied the expectations of the Select Committee. The option contained in the saving clause does not appear to have been availed of and our businessmen still continue to stick to the bewildering usages governing these instruments.

12. In pursuance of a suggestion that the use of indigenous instruments should be discontinued altogether after the lapse of a specified period, we sought the views of representative commercial bodies once again on the specific question of omitting the saving clause as to local usage on the expiry of a specified period. If this suggestion had been accepted, it would have meant that after an appointed date only those instruments which conform to the requirements of the Negoti-

able Instruments Act,—irrespective of the language in which they are written,—would get the protection of the law and that no other instrument or any usages relating thereto would have any legal sanction.

The suggestion did not, however, find favour with the commercial bodies except in those parts of the country where mercantile transactions are rarely carried on through the medium of hundis or similar indigenous instruments having special incidents.

13. Having given our anxious consideration to the question, we are of the opinion that hundis and the shroffs who finance commercial transactions through hundis do a very useful service over the larger part of the country, particularly in the villages where the modern banking system has not so far been extended. Though it would have been a great advance towards securing uniformity of the law if all negotiable instruments could be brought under the codified law, we cannot afford to prevent the use of the hundis so long as we are not in a position to have an efficient Bank in each village. As things are, we cannot prevent the operation of the indigenous system without causing a serious dislocation of our trade and commerce.

14. The suggestion made by some of the Chambers, however, was that hundis should be allowed to retain their peculiar incidents according to usage and that those usages should be codified by us. It is, however, not easy to define a hundi or to discover its essential attributes. It would appear from the text-books¹ and judicial decisions that no less than a dozen varieties of hundis are in vogue in this country. The usages differ so widely as between these species and from place to place that we can discover only a few characteristics or incidents which may be attributed to hundis in general; for instance—

- (1) Hundis payable to a specified person or order are negotiable without endorsement by the payee²;

1. Cf. Bhashyam & Adiga, *Negotiable Instruments Act*, 10th Ed., pp. 18 et seq.; Singh *Law of Mercantile Usages in India*, 1939, pp. 131-141.

2. *Rajroopram v. Buddo*, (1863) 1 Ind. Jur. (O.S.) 93.

- (2) a holder is entitled to sue on a hundi without an endorsement in his favour;
- (3) a hundi accepted by the drawee could be negotiated without endorsement¹;
- (4) if a hundi is lost, the owner could claim a *peth* (duplicate) or *parapeth* (triplicate) from the drawer and present it to the drawee for payment²;
- (5) interest above 6 per centum per annum can be charged where usage is established³;
- (6) even though a hundi is silent as to payment of interest, the market rate of interest is payable, according to usage⁴.

15. Apart from a few common features such as the above, each kind of hundi has its own peculiar characteristics and incidents. Though it is not necessary for our purpose to analyse these features exhaustively we shall refer to the characteristics of some of those types of hundis which cannot possibly claim to be one of the three instruments governed by the Act—only to demonstrate the impracticability of any attempt to codify the usages relating to them.

Thus, a *Shah Jog* hundi, a most commonly used form of hundi, has been held to be neither a bill of exchange nor a promissory note. It is not payable to a specified person or his order or to bearer. It is payable to a Shah, that is, a respectable person, a man of worth and substance known in the bazar though not specified in the instrument. The drawee, before making payment, has to satisfy himself that the person demanding payment is a 'Shah'. It is not usually presented for acceptance on the due date and may be accepted orally.

1. *East India Bank v. Khojah Vullie*, (1866) 1 Ind. Jur. (N. S.) 247.

2. *Mulchand v. Suganchand*, 1 Bom. 23.

3. *Komal Singh v. Rambharosa*, A.I.R. 1943 Nag. 99.

4. *Har Narain v. Bihari Lal*, A.I.R. 1932 Lah. 582.

5. *Champaklal v. Keshrichand*, (1926) 50 Bom. 765 ; *Keshrichand v. Asharan*, A. I. R. 1916 Cal. 888 ; *Murli Dhar v. Hukam Chand*, A. I. R. 1932 Lah. 312.

A *Nam Jog hundi* is payable to the person whose name is specified in the body of the instrument. It is similar in form to a *Shah Jog hundi* except that in place of 'Shah' the name of a particular person as the payee is specified. It has been held¹ that all that the drawer of a *nam jog hundi* guarantees is that the drawee will honour and pay the hundi when it is presented to him on maturity, and if the drawee fails to do so, then the drawer would repay the amount thereof provided the hundi is returned to him in an undischarged state. Where, however, the drawee is not in a position to return the hundi in an undischarged state, it is the drawee who shall be liable in damages to the owner of the hundi for wrongful conversion, the measure of damages being the amount of the hundi¹.

A *Dhani Jog hundi*, on the other hand, has been held² to be an instrument "payable to the person who purchases it, as distinguished from *Shah Jog*,—an epithet..... importing that the person presenting it is worthy and may be trusted with the cash answering to payable to bearer (Molesworth)" and the word 'dhani' has been held not to be equivalent to "bearer" in the sense that word is used in the Negotiable Instruments Act. In the result, a mere bearer of a *Dhani Jog hundi* is not, as such, entitled to payment. It is, accordingly, not a negotiable instrument within the meaning of the Act³.

A *Jokhmi hundi* is payable only in the event of arrival of goods. It is both a contract of insurance and an instrument for payment of money. Sargent J., in *Jadowji Gopal v. Jetha Shamji*³ summarised the incidents of this species of hundi as follows—

".....a *jokhmi hundi* is always drawn on or against goods shipped on the vessel mentioned in the *hundi*; and, lastly, that the price paid for a *jokhmi hundi* depends on the rate of exchange, the vessel in which the goods are shipped, the season, and the nature of the goods. A *jokhmi hundi*

1. *Lallubhai v. Ratanchand*, A.I.R. 1940 Bom. 82.

2. *Jetha Parkha & others v. Ramchandra Vithoba*, (1892) 16 Bom. 689, at 699.

3. 1879 4 Bom. 333 (340).

would thus appear to have been designed with a double purpose, viz., to put the drawer of the *hundi* in funds, and, at the same time, to effect an insurance upon the goods themselves, by reversing the position of the insurer and insured from that which obtains in ordinary policies, the insurer being the buyer of the *hundi* who pays the insurance money down, and is entitled to recover it with a premium (together making the amount of the *hundi*) in case the vessel arrives safely."

A *Jowabi hundi* is described by Macpherson on Contracts at p. 166 as follows:

"A person desirous of making a remittance writes to the payee and delivers the letter to a banker who either endorses it on to any of his correspondents near the payee's place of residence or negotiates its transfer. On its arrival, the letter is forwarded to the payee who attends and gives his receipt in the form of an answer to the letter, which is forwarded by the same channel to the drawer of the order."

A *Zikrichit hundi* is a letter of protection which is given to the holder of a *hundi* by the drawer or any other prior party to be used by him in case the *hundi* gets dishonoured. It is mostly in use amongst Marwari Shroffs.

16. The foregoing account of some of the *hundis* would suffice to show that it is not possible to evolve uniform rules applicable to *hundis* of the various kinds for the purpose of codification. The Bharat Chamber of Commerce, Calcutta, furnished us with a copy of Rules which have had the approval of eleven trade associations. But these Rules relate to *one kind of hundis only*, namely, *Darshani hundis*, and we have not been able to discover whether there are any agreed Rules governing the other kinds of *hundis*, or whether the Rules referred to by the Bharat Chamber are accepted throughout the country.

Codification not being possible, we must leave such instruments in use as at present. We, therefore, propose to make it clear¹ that the Act will be confined in its application to the

Vide s. 3 of App. I.

three kinds of instruments, viz., bills of exchange, promissory notes and cheques, but that it will apply to them irrespective of the language in which they are written. Instruments which do not answer the requirements of the Act in respect of any of these three kinds of instruments will remain outside the purview of the Act, so that no saving clause is required to save the usages relating to such instruments.

17. Another major suggestion made by some of the Chambers is that certain other types of instruments recognised in the mercantile world should also be brought within the ambit of the Act. These documents fall under two categories:

Whether other types of negotiable instruments should be included.

- (1) Documents under which money is payable, such as (i) debentures, (ii) bonds issued by companies, (iii) bearer bonds, (iv) bearer scrips, (v) bearer debentures, (vi) treasury bills, (vii) postal orders, (viii) share certificates, (ix) insurance certificates, (x) deposit receipts, and (xi) pay warrants.
- (2) Documents relating to delivery of goods known as mercantile documents of title to goods, which are described in s. 137 of the Transfer of Property Act.

The second class of documents referred to above are obviously outside the purview of the Act as they relate to delivery of goods and not payment of money.

As regards the other class of documents which are negotiable by usage or custom we feel that no specific purpose would be served by including them in the Act except to give statutory recognition to the usage or custom, if any, by which they are negotiable. They will not be subject to the other provisions of the Act, such as presentment for payment or acceptance, notice of dishonour, or the liability of parties. It is also not possible to make a complete and exhaustive list of such instruments without undertaking an elaborate inquiry. Some of them are governed by special laws such as the Companies Act and the Insurance Act. We, therefore, feel that

it is neither useful nor practicable to bring them within the Act.

Certification
of cheques.

18. Two suggestions relating to cheques deserve particular mention. The first is that certification of cheques should be treated as equivalent to acceptance as in the case of bills. In the *Bank of Baroda case*¹ the Privy Council examined this question and held that certification of cheques as practised in England and also by some banks in India did not amount to acceptance in the sense in which it was understood in the case of bills. Under the American Uniform Negotiable Instruments Law (ss. 187 to 189), on the other hand, certification is treated as equivalent to acceptance, and the effect of certification is to discharge the drawer and all indorsers from liability thereon (s. 188). The point for consideration, therefore, is whether we should follow the American law, or leave the law as settled by the Privy Council unaltered. Some of the bankers whom we interviewed were not in favour of adopting the American law. We have been told that certification is not resorted to very frequently in India and that in cases where an assurance is needed that funds of the drawer are available with the Bank, the practice followed, as in Australia, is for the Bank to issue its own cheques. In the circumstances, we think no alteration of the law is required.

Cheques
marked
"Account
payee."

19. The second question is—to what extent we should accord legislative recognition to the practice of marking cheques "account payee". It has been found by experience that a cheque with general or special crossing does not afford sufficient protection to the true owner. It was at one time supposed in England that the addition of words "not negotiable" in the crossing would enlarge the protection. But the Courts have belied this expectation by holding that a cheque crossed 'not negotiable' is still transferable². In the meanwhile, businessmen were evolving for their own security a method of crossing cheques "account payee". The object

1. *Bank of Baroda Ltd., v. The Punjab National Bank Ltd.*, A. I. R. 1944 P. C. 58.

2. *Fisher v. Roberts*, (1890) 116 T. L. R. 354 (C.A.).

of such crossing is to make it obligatory on the collecting bank to credit the amount received from the paying bank to the payee's account with the former. But a decision of the Court of Appeal¹, again, introduced a complication. It was held that notwithstanding such crossing the cheques remained negotiable as the words "account payee" did not prohibit transfer under section 8 of the Bills of Exchange Act. But if a cheque crossed "account payee" still remains negotiable, it unnecessarily enhances the duty of inquiry on the part of the collecting bank² without a corresponding gain in security to the parties, for, the law or practice relating to the "account payee" cheque has not yet been settled. The acceptance of the suggestion that the custom of crossing cheques "account payee" should be recognised will not result in any substantial advantage unless such cheques are made *not negotiable* by the law. In that case, the payee only would be entitled to deliver the cheque for collection. Even if his signature is forged by somebody, the collecting bank will credit the amount in the payee's account and the forger would derive no benefit. The risk of the banks would also be minimised, and none but a bank having an account in the name of the payee would then accept such a cheque for collection. We, have, therefore, provided³ that if a cheque is marked "account payee" it shall cease to be negotiable and that it shall be the duty of the banker collecting the amount under the cheque to credit it only in the account of the payee named in the cheque.

We have added a provision for the protection of a banker who *bona fide* collects the payment of a cheque in which the crossing "account payee" has been obliterated or altered.

20. Having dealt with the main suggestions, we now proceed to explain the broad features of the revision proposed by us.

1. *National Bank v. Silke*, (1891) 1 Q. B. 435.

2. Chalmers, Bills of Exchange, 12th Ed. p. 254 ; Byles, Bills of Exchange 21st Ed., pp. 43,47.

3. S. 144 of App. I.

Scheme
adopted for
revision and
major changes
proposed.

21. The Act as it stands is not exhaustive. Wherever the Act is silent, the principles of English law have been followed by our courts¹. We have thought it advisable to adopt more of these principles as codified in the Bills of Exchange Act instead of leaving the Courts to inquire into the uncertain rules of the law merchant and to apply them to particular cases or to determine whether the principle embodied in any particular provision of the English Act is applicable to such cases.

A comparative study of the English Bills of Exchange Act and the American Uniform Negotiable Instruments Law as well as the suggestions received from commercial bodies have also induced us to propose other changes in our Act.

22. The existing scheme of arrangement of the Act is confusing² and illogical. A scrutiny of the provisions of the Act will reveal that some of them are applicable to all the three instruments—promissory notes, bills of exchange and cheques, while some are peculiar to bills of exchange, some to promissory notes and some to cheques. This suggests that the sections which are of a general nature and applicable to all the three instruments should be grouped in one part, while the provisions peculiar to each of these instruments should be placed in separate parts. Following this natural division, we have arranged the sections of the Act in four parts: Part I containing general provisions; Part II relating to bills of exchange; Part III to promissory notes; and Part IV to cheques.

Conflict of
laws.

23. While we shall explain our detailed proposals in the course of our examination of the existing provisions of the Act, we consider it proper to accord a special treatment to one major topic which has been largely modified and recast by us, namely, the provisions relating to Conflict of Laws.

24. The first thing that strikes one on this subject is the lack of uniformity in the principles embodied in the English and the Indian enactments and also as between such principles.

1. *Muthur Sahib v. Kadir Sahib*, (1905) 28 Mad. 544 ; *Veerappa v. Vellayan*, (1919) M.W.N. 780 ; *Royal Bank of Scotland v. Rahim*, (1924) 49 Bom. 270.

2. *Benares Bank Lt., v. Hormusji*, (1930) 52 All. 696 (697).

and those followed in other countries. This want of uniformity is regrettable, particularly in view of the fact that negotiable instruments have become the usual medium of the ever expanding international trade and commerce. An attempt to evolve uniform rules in this behalf was indeed made at the Geneva Convention of 1930. The nations who were parties to that Convention agreed:—

- (a) to adopt a uniform law for bills of exchange and promissory notes;
- (b) to settle questions of private international law arising in connection with bills and notes; and
- (c) to unify the rules concerning stamp duties¹.

The Conventions agreed upon² were adopted by Austria, Belgium, Denmark, Dunkirk, Finland, France, Germany, Greece, Italy, Japan, Monaco, Netherlands, Norway, Portugal, Sweden and Switzerland. They were not, however, adopted by England (except on one matter), the United States and the Commonwealth countries.

As India has not adopted them we are free to incorporate such rules as are widely acknowledged and are consonant with the general principles of Private International Law, justice and equity.

25. The primary reason for disturbing the existing provisions as contained in sections 134—137 of our Act is that they do not deal with all the questions which ordinarily arise in this branch of the law. The English Act is no better guide on this subject because it deals with the entire subject in one section (section 72) which is no more exhaustive than the provisions of our Act. Moreover, the English section has been severely criticised as “ambiguous” and “unintelligible”³.

26. The principal questions which require to be solved in connection with international dealings in negotiable instruments are—the capacity of parties, the formal and essential validity of the contract, the liability of the parties including.

1. *Vide* Cheshire, Private International Law, 4th Ed. p. 247.

2. League of Nations Doc. C. 346 (I), M. 142(I), 1930 (II).

3. Cheshire, Private International Law, 4th Ed., 7, 253, pp. 4

the formalities regulating presentment for acceptance, presentment for payment, notice of dishonour for non-acceptance and non-payment, noting and protest. Our Act does not provide for the first two at all. We shall now examine the principles relevant to each of these questions.

27. For determining the capacity of the parties the choice is between *lex domicilii* (law of domicile) and *lex loci contractus* (law of the place where the contract took place).

In England, the current opinion is that so far as mercantile contracts are concerned, there is a presumption that the parties submitted to the law of the place of contract and that governs the matter unless the presumption is rebutted.¹ This view has been accepted by the Madras High Court².

As pointed out by Cheshire³, under modern conditions of trade, the domicile of the parties cannot be allowed to govern the question of capacity, for, in that case, a foreigner, contracting in another country, would be allowed to escape liability on the ground, for instance, that according to the law of his own country, which may not be known to the other party, a person does not attain majority even at the age of 21. It can hardly be overlooked that the Geneva Convention (on Conflict of Laws) which starts with the general rule based on *lex domicilii* has to make an exception on the basis of *lex loci contractus*. Thus, while the first clause of Article 2 of the Convention says that the capacity of a person to bind himself should be determined by his national law, the second clause of that Article provides that "a person who lacks capacity according to law specified in the preceding rule shall nevertheless be bound if his signature had been given in any territory in which according to law in force there, he would have the requisite capacity." We would prefer to adopt the *lex loci contractus* instead of any such compromise formula which would introduce unnecessary complications.

1. Schmitthoff, *Conflict of Laws*, 3rd Ed., pp. 117-8; Dicey, *Conflict of Laws* 6th Ed., p. 621.

2. *T.N.S., Firm v. Md. Husain*, A.I.R. 1933 Mad. 756.

3. *Private International Law*, 4th Ed., p. 213.

28. But though we elect in favour of the *lex loci contractus*, we would not prevent the parties from having their own choice in the matter of the law which would govern their contract, by an express stipulation in the instrument itself.

We have, accordingly, proposed the simple rule that in the absence of any contract to the contrary, the capacity of the parties to an instrument shall be determined by the law of the country where the contract constituted by the negotiable instrument was made.

29. But this rule, without more, would be incomplete, for, a negotiable instrument involves a composite contract. It consists not only of the original contract between the parties to the instrument but also of "supervening contracts" (to adopt the expression used by the Bills of Exchange Act) made by the acceptor or indorser. Each of these contracts may be entered into at different places and the validity of each must naturally be determined according to the place where such contract was made¹. We have made this clear in our proposal².

30. In formulating the foregoing rule, we have followed the provision in sub-section (1) of section 72 of the English Act, but as that sub-section shows, the rule should be made subject to two exceptions:

(a) The first exception is in respect of the requirement of stamp. The rule recognised by English private international law in this behalf was that if under the law of the place where the contract is made an instrument is void for want of proper stamp, it should not be recognised as valid in any other country³. If, however, the want of requisite stamp makes the instrument only inadmissible in evidence under the law of the place of contract its validity is not affected as it is only a rule of evidence⁴. The Bills of Exchange Act has done away with this distinction and laid down that a bill issued outside the United Kingdom is not invalid by reason only that

1. Cf. *Palaniappa Chetty v. Peria Karuppanchetty*, 17 Mad. 262.

2. S. 108(a) of App. I.

3. *Alves v. Hodgson*, (1797) 7 T. R. 241.

4. *Bristow v. Sequeville*, (1850) 5 Ex. 275.

it is not stamped in accordance with the law of the place of issue. Its admissibility or enforceability in the U.K. will depend upon the requirements of English law in that behalf.

In India, the Act is silent and the old rule was applied in *Venkatarami v. Seetharama*¹ and *Manattil Ali v. Vazhapulli Varial*². Under our stamp law a document is not void but becomes inadmissible in evidence even in cases where the defect of stamp is not curable under section 35 of the Stamp Act. A foreign instrument, when brought into India, has to be stamped according to our law (*vide* section 19 of the Stamp Act). Hence, there is no justification for invoking the technicality of a foreign law relating to stamp revenue to invalidate the instrument in India and the liberal rule introduced by the English Act should be adopted by us. It may be noticed that a similar view was expressed by Whitley Stokes³.

(b) The other exception recognised by the Proviso (b) to section 72(1) of the English Act, is already embodied in section 136 of our Act. It may be mentioned that paragraph 2 of Article 3 of the Geneva Convention is also to the same effect. Hence, we do not think it necessary to disturb the existing provision.

31. Regarding the liability of the parties, section 134 of our Act makes a distinction between the maker or drawer of a foreign instrument on the one hand, and the acceptor or indorser, on the other. The liability, in the case of the maker or drawer, is determined by the law of the place where the instrument is made but in the case of an acceptor or indorser it is determined by the law of the place where the instrument is made payable. But the liability of the maker of the note should, according to the true principles of international law, be governed by the law of the place where it is payable (*lex loci solutionis*). In the case of a drawer the place of drawing is, of course, usually the place of payment. The acceptor being the principal debtor, his liability is also determined by

1. I. L. R. (1930) 53 Mad. 968.

2. (1941) 1 M. L. J. 35 n.

3. Anglo-Indian Codes, Vol. 1 p. 664.

the place of payment in accordance with the contract of acceptance. The liability of the indorsers should naturally follow the liability of the principal debtor.

We have, accordingly, suggested a clear provision that the liability of all parties to the instrument shall be governed by the law of the place where such instrument is payable.

32. It follows that the conditions governing liability, such as what constitutes dishonour and what notice of dishonour is sufficient, the due date¹, or the duties of the holder with respect to presentment for acceptance or payment must be governed by the law of the place where the money is payable. This principle is, in substance recognised by section 135 of our Act, though not fully developed. The corresponding provision in sub-section (3) of section 72 of the English Act is ambiguous and has been rightly criticised as verging "perilously on the unintelligible"².

We have suggested simpler provisions.

33. All questions relating to payment and satisfaction including interest should, logically, be governed by the law of the place where the instrument is payable³.

As section 72(4) of the Bills of Exchange Act provides, the rate of exchange at which payment is to be made, being an incident of payment, should also be governed by the place of payment, if the instrument is expressed in a foreign currency. Representations having been made before us that in the absence of a provision in our Act in this behalf considerable inconvenience is experienced, we have proposed a clear provision regarding this matter.

34. Having dealt with the broader questions, we now proceed to examine the provisions of the Act *seriatim*, pointing out the problems which have arisen and indicating, broadly, our proposals for their solution.

Examination of the provisions of the Act, indicating the changes proposed.

1. *Rouquette v. Overmann & Sohan* (1874-75) 10 Q. B. 525 ; s. 72 (5) B. E. Act ; Art. of the Geneva Convention.

2. Cheshire, *Private International Law*, 4th Ed. p. 253.

3. Foote, *Private International Law*, 5th Ed., pp. 460-1, quoted in Cheshire, 4th Ed. pp. 253-4.

Section 1.

35. The Act has already been extended to the State of Jammu and Kashmir by the Jammu and Kashmir (Extension of Laws) Act, 1956 (62 of 1956), and the words "except the State of Jammu and Kashmir" in section 1 and the definition of "India" in section 3 have been omitted by that Act.

We have substituted the Saving Clause in section 1 by two new sections: one of them¹ refers to the provision in section 31 of the Reserve Bank of India Act, 1934, which has taken the place of section 21 of the Indian Paper Currency Act, 1871. The other section² seeks to replace the existing provision regarding instruments in oriental languages.

In pursuance of our views as explained in paragraphs 9 and 16, *ante*, we have made it clear that—

- (a) The scope of the Act is restricted to 'negotiable instruments' as defined in the Act, that is, promissory notes, bills of exchange and cheques. It would follow that no provision in the Act would extend to or affect any usage relating to any instrument other than these three.
- (b) If, however, an instrument conforms to the definition of a negotiable instrument, it shall be governed exclusively by the provisions of this Act, whatever the language in which it is written. In other words, if an instrument is a 'negotiable instrument' within the meaning of this Act, no usage relating to such instrument shall be permitted to defeat or modify the provisions of the Act. In any case, language will no longer be a test for determining whether the provisions of the Act are applicable to an instrument or not.

Sec. 3.
"India".

36. As pointed out above³, the definition of "India" has already been omitted by the Legislature.

1. S. 2 of App. I.
2. S. 3 of App. I.
3. Para. 35., *ante*.

37. The definition of “banker” has been recently substituted by the Negotiable Instruments (Amendment) Act, 1955 (37 of 1955); but the definition still remains unsatisfactory inasmuch as it does not explain what constitutes the business of banking so as to make a person engaged in such business a “banker”. We have removed this defect by adopting the definition of ‘banking’ given in s. 5(1)(b) of the Banking Companies Act, 1949 (10 of 1949), which follows the definition given in Hart on Banking¹ and has so far been accepted as comprehensive.

38. The definition of “notary public” has been omitted by section 6 of the Notaries Act, 1952. That Act has taken away the power to appoint ‘notaries public’ under the Negotiable Instruments Act and has, instead, provided for the appointment of ‘notaries’, who shall exercise, *inter alia*, the functions of a notary under the Negotiable Instruments Act. But the omission of the definition from the Negotiable Instruments Act, is not happy inasmuch as the words “notary public” are still used in Chapter IX of the Negotiable Instruments Act. Some explanation of that expression, accordingly, seems necessary. We have, therefore,

“Notary public”.

(a) inserted a definition of ‘notary’, referring to the Notaries Act, 1952; and

(b) substituted the word ‘notary’ for the words ‘notary public’ wherever they occur in this Act.

39. Besides modifying the existing definitions, we have added a number of new definitions which, we believe, would be conducive to a better understanding of the Act. Thus,—

(a) Section 59 of the Act refers to an “accommodation note or bill” but the term “accommodation party” is not defined in the Act. This omission has been supplied by adding a definition in the light of section 28(1) of the Bills of Exchange Act.

‘Accommodation party’

1. 4th Ed., Vol. I, pp. 1-2.

“Bearer”.

- (b) We have added a definition of “bearer”, for reasons which will be explained while dealing with the definition of “holder”.

“Bill”,
“Note”,
“Instrument”.

- (c) For the sake of economy of words, we have, following the American law, added the definitions of “bill”, “note” and “instrument”, defining them as bill of exchange, promissory note and negotiable instrument, respectively.

“Delivery.”

- (d) In order to avoid a repetition of the words “actual or constructive” wherever the word “delivery” is used in the Act, we have introduced a definition of “delivery”, following the definition given in section 2 of the Bills of Exchange Act.

“Issue.”

- (e) We have considered it necessary to include a definition of “issue”, for, the word which is used in several provisions of the Act has a technical meaning. It is restricted to the first delivery of an instrument to a holder after the instrument is drawn up and completed. If a promissory note, bill, or cheque is executed but kept without delivery, it does not become effective. It is in this sense that the word ‘issue’ is defined in section 2 of the Bills of Exchange Act, 1882, and we have adopted that definition.

“Maker”

- (f) The words “maker” and “drawer” are indifferently used in the Act. While the maker of a bill of exchange or cheque is defined as a “drawer” in section 7, there is no separate definition of the word “maker” to denote the maker of a promissory note. On the contrary, in sections 5 and 7 and the Explanation to section 44, the word ‘maker’ is used in a general sense, referring to instruments other than promissory notes as well. In section 51, on the other hand, both the terms ‘maker’ and ‘drawer’ are used in juxtaposition to each other.

This has naturally led to a confusion and two decisions¹⁻² of the Lahore High Court have taken contradictory views as to whether the word 'drawer' includes the maker of a promissory note. To remove this uncertainty, we have inserted a definition of "maker" so as to confine it to the executant of a promissory note, leaving it to the word "drawer" to refer to the executant of a bill of exchange or cheque. Consequential changes have also been made in the various provisions of the Act to make this clear.

- (g) Though sections 87-89 deal with the effects of material alteration, there is no provision in the Act to explain what constitutes a 'material alteration'. In general, courts in India have followed the English common law and held that anything which has the effect of altering the legal relationship between the parties³ or the character of the instrument or the sum payable amounts to a material alteration. Since it is difficult to exhaust all the circumstances which might possibly constitute a material alteration we prefer to adopt the provision in section 64 (2) of the Bills of Exchange Act, which is illustrative and not exhaustive.
- (h) By adding a definition of the word 'representative' we have sought to effect an economy of words in several sections, *e.g.*, 75, 94.

40. Besides adding the foregoing new definitions, we have transferred to the Definition Clause a number of other definitions which are, at present, interspersed amongst the substantive provisions of the Act, such as "Promissory Note", "Bill of Exchange", "Cheque" and the like, with modifications which will be explained in their proper places.

1. *Shiv Nath v. Bishambar*, A. I. R. 1935 Lah. 153.

2. *Sheikh Muhammad v. Abdul*, A. I. R. 1937 Lah. 259.

3. *Subramania v. Porathana*, A. I. R. 1942 Mad. 709.

Sec. 4. 41. As would appear from the second paragraph of section 5 and section 21, a promissory note may be payable either 'on demand' or 'at a fixed or determinable future time'. But though the law in India is not different from that in England, this is not quite clear from the existing definition of "promissory note". We have, accordingly, added these words to the definition of "promissory note", and also added a separate provision¹, on the lines of section 11 of the English Act, to explain what is meant by "at a determinable future time".

Sec. 5. 42. The words "on demand or at a fixed or determinable future time" have similarly been added to the definition of "bill of exchange" contained in the first paragraph of section 5, for, the existing provision is silent as to the time of payment of a bill of exchange though a cheque is defined as a bill of exchange "not expressed to be payable otherwise than on demand." The English and American provisions do not leave it to inference and we prefer to follow these precedents.

Para 1.

Some of the Chambers of Commerce suggested that subsection (4) of section 3 of the Bills of Exchange Act should be adopted and a provision should be made that an instrument, which is not dated or in which the value or the place where it is drawn or payable are not mentioned, should be valid. We do not consider it useful to give effect to this suggestion, having regard to the conditions prevalent in India. The date is important in several respects and there is a presumption under section 118 in favour of execution on the date given in an instrument. Apart from this it can hardly be overlooked that, notwithstanding section 3(4) (a) of the Bills of Exchange Act, in practice² no undated cheque is paid by a banker in England and such practice has recently been judicially noticed³. It would not be advisable therefore, to incorporate an express provision to the effect that dating is not necessary to give validity to the instrument.

1. S. 17 of App. I.

2. Byles on Bills of Exchange, 21st Ed., p. 13.

3. *Griffiths v. Dalton*, (1940) 2 K.B. 264.

On the other hand, there is no need to include similar statements relating to the payment of consideration or the place of execution or that for payment, for, the definitions in our Act relating to the several instruments do not require these matters to be stated in any of the instruments. On the contrary, so far as consideration is concerned there is, in section 118(a), a presumption in favour of its payment as regards every negotiable instrument.

43. Paragraphs 2 to 4 of section 5 deal with certain Paras. 2-4.
general conditions, such as 'certainty', which are applicable to all negotiable instruments. Hence, they should logically come under Chapter II, as proposed by us¹.

We have elaborated the provision relating to an unconditional order or promise to pay, by incorporating the provision contained in section 3(3) of the Bills of Exchange Act, which is not inconsistent with the principle embodied in paragraph 2 of section 5 of our Act.

As regards paragraph 3 of the section dealing with certainty of the sum payable, we have elaborated it by adopting the provision in section 9(1) (c) of the English Act relating to stipulation for payment by instalment with a default clause. We have also substituted the ambiguous words 'according to the course of exchange' by the words 'current rate of exchange.'

At the end of the clause relating to 'certain person', we have added the condition of 'reasonable certainty' which occurs in section 7(1) of the Bills of Exchange Act and has also been applied in India².

We have also stated, in this context, what would be the effect where the payee is fictitious or non-existent, by adopting the provisions of section 7(3) of the English Act, which is founded on good reason³.

1. S. 13 of App. I.

2. *Venkatarami v. Maharaja*, 53 Mad. 968.

3. Cf. Chalmers, *Bills of Exchange*, 12th Ed., p. 25.

Secs. 6-7
 "Cheque"
 "drawer"
 "drawee"
 "acceptor"
 "payee".

44. We have shifted the definitions of "cheque", "drawer", "drawee" and "drawee in case of need", "acceptor", "acceptor for honour", and "payee", to the Definition Clause proposed by us, without any change in principle.

In the definition of "payee", we have added the word 'undertaken' since that would be more appropriate when the instrument is a promissory note.

Sec. 8.
 "Holder".

45. While similarly transferring the definition of "holder", we have made substantial changes, which require a fuller explanation.

It may, however, be observed at the outset that the changes introduced do not seek to alter the law but to obviate the conflict of judicial opinions and the criticism of commentators which the existing definition has given rise to.

The expression "persons entitled in his own name to the possession of the instrument and to receive and recover the amount" is ambiguous. If the expression be literally construed, a bearer would be excluded from the definition as his name does not appear on the instrument. But if all that is meant by the expression is that he should be entitled to possession in his own name and to sue upon it though his name does not appear on it, a bearer may then be within the definition¹. As pointed out by a Full Bench of the Madras High Court² the expression "in his own name" was introduced only for the purpose of ruling out the plea that the holder of an instrument was a *benamidar* for some other person. That the beneficial owner cannot claim to be a holder may now be taken as the prevailing view³. We have adopted this view in order to put a stop to all controversy on the point, and have expressly excluded the beneficial owner from the definition of "holder".

46. The principal source of difficulties is the use of the word "entitled". This word is of a very wide implication.

1. *Ramanadan Chettiar v. Gundu Ayyar* A. I. R. 1928 Mad. 1238 (1243).

2. *Subba Narayana v. Ramaswami*, (1907) 30 Mad. 88 (F.B.).

3. *Harkishore v. Gura Mia*, (1930) 58 Cal. 752 ; *Virappa v. Mahadebappa*, A. I. R. 1934 Bom. 356 ; *Bacha Prasad v. Janki*, A. I. R. 1957 Pat. 380 (F.B.).

A person may be entitled to an instrument either as a payee or indorsee, or, as a bearer if the instrument is one payable to bearer. He may be entitled to it also by other modes of transfer of the interest in the instrument, such as assignment as an actionable claim, in accordance with sections 130 and 132 of the Transfer of Property Act or legal devolution. It may not be in accordance with the scheme of the Act to recognise persons other than a payee, indorsee or a bearer as holders, even though they may be entitled to the possession of the instrument and to recover the debt due under the instrument. A person may become owner of the debt and sue for its recovery if there is an assignment of the debt or if there is legal devolution, but that does not make him a "holder" within the meaning of the Act. Of course, a single Judge of the Madras High Court¹ and a Bench of the Calcutta High Court² have held that an assignee is a holder within the meaning of section 8, but the contrary view, which has been consistently maintained by the Allahabad High Court³, appears to be preferable. In these cases³, the Allahabad High Court has made it clear that a transferee by legal devolution is entitled to recover the amount due on the instrument not because he is the 'holder' but because he, as the owner of the debt, is entitled to give a valid discharge even apart from the provisions of section 78 of the Negotiable Instruments Act. सत्यमेव जयते

The right of negotiation is conferred by the Act only upon a maker, drawer, payee or indorsee (*vide s. 51*) and in the case of a bearer instrument, upon the bearer. In the case of an instrument payable to order, section 48 lays down that it is negotiable by a 'holder' by indorsement and

1. *Seshachalam Naidu v. Venkatachalam Chetty* (1954) 2 M.L.J. 471.

2. *Surathchandra v. Narayan Chandra*, (1934) 61 Cal. 425.

3. *Parsotam v. Bankey Lal*, A. I. R. 1935 All. 1041 ; *Jang Bahadur v. Chandra* A. I. R. 1939 All. 279 ; *Ramkishore v. Ramprasad* A. I. R. 1952 All. 245 (F.B).

delivery thereof. The "holder" in this context does not mean an assignee or a person who has acquired rights under the instrument by legal devolution. An assignee, not being an indorsee, cannot claim any rights under the Act against prior parties and his rights are governed by the provisions of the Transfer of Property Act which lay down that the transferee takes the rights under the assignment subject to the equities to which the transferor was subject at the time of the transfer. In this connection, it must be remembered that the Transfer of Property Act expressly saves the mode of transfer by negotiation though it does not prevent the assignment of rights under a negotiable instrument *qua* an actionable claim.

We, therefore, think that the position should be made clear, by omitting from the definition of 'holder' the words, "entitled in his own name to the possession thereof" and expressly enumerating the persons who are entitled to be a holder, as in section 2 of the Bills of Exchange Act, *viz.*, "the payee or indorsee of an instrument who is in possession of the instrument or the bearer thereof".

47. The English Act, however, defines 'bearer' as meaning "a person in possession of a bill or note which is payable to bearer". In the case of instruments payable to order, it is clear that a person cannot be a holder unless he is the payee or the indorsee thereof and the indorsement is on the instrument itself; a person whose name does not appear on the instrument as indorsee cannot claim his rights thereunder. But in the case of a bearer instrument, since negotiation is only by delivery and no indorsement is required, possession alone is material. The English definition of "bearer" does not require that possession should be a lawful possession. The possession of a finder or a thief may, therefore, be a good possession to make him a bearer and, therefore, a holder. Under the existing provisions of our Act, such persons are excluded because of the word "entitled" in the definition of "holder". Section 58 of the Act makes it clear that such a person is not entitled to receive the amount due thereon from the maker, acceptor, or holder.

or from any party prior to the holder. He is, therefore, not entitled to sue and recover the money but, as it very often happens, a third party dealing with such a person may presume the latter's possession to be lawful. acquire rights under the instrument from him for consideration and thus become a "holder in due course". The rights of a third party who thus becomes a holder are protected by section 48. But suppose a person makes a payment to a finder or a thief, believing him to be the lawful holder of the instrument. Such a payment is also protected, because under section 82(c), if an instrument is payable to bearer or has been indorsed in blank, the maker, acceptor or indorser who makes a payment in due course of the amount due thereof gets, a complete discharge. These provisions, thus, amply protect under our law a third party dealing with a person in possession of a bearer instrument but do not give that person a right to recover the amount due under it in his own right by suing upon the instrument unless his possession is lawful.

48. As stated above, the English law is different. But there is no justification, in our opinion, to clothe any person in mere possession with a right to sue and enable him to recover the amount. We, therefore, propose to adopt an altered definition of "bearer" as meaning a person who comes into possession of an instrument payable to bearer by negotiation, that is, by delivery from the lawful holder. Finders, thieves, and such other persons as are enumerated in section 58 will thus be excluded as they cannot be "holders" under our Act. The implications of the word "entitled" in the existing definition of "holder" will thus be fully covered by the changes proposed by us.

49. We have omitted the words "and to receive or recover the amount due thereon from the parties thereto" as the rights of a "holder" have been specified in a separate section proposed by us¹.

1. See s. 47 of App. I.

50. The language of the second paragraph of section 8 is also unsatisfactory. It has been criticised by Chalmers¹ thus—

“it is a strain upon language to describe the original owner of a lost instrument as the holder of it. Suppose a cheque payable to bearer is lost, and the person who finds it negotiates it to some other person who takes it in good faith and for value. The latter becomes the holder in due course of the instrument. There are then two holders of the same cheque in this case, according to the Act.”

As Bhashyam and Adiga² suggest, this absurdity may be avoided if we construe the word ‘lost’ as “lost to the world” and “not found again”. We have made a verbal change to this effect and also made it clear that the holder before such loss or destruction “shall be deemed to continue to be its holder.”

Sec. 9.

“Holder in;
due course”.

51. In the definition of “holder in due course”, we have substituted the word “become overdue” for the words “became payable”, as the latter cannot aptly be applied to the case of instruments payable on demand. It is well-established that in the case of an instrument payable on demands, limitation for an action on the instrument starts, immediately after its execution. If that rule were to be applied to section 9, it would exclude the possibility of a person ever becoming a holder in due course in the case of instruments payable on demand, for they become due immediately after execution³. To overcome this difficulty, we have considered it advisable to adopt the language of the English Act and the American Uniform Negotiable Instruments Law, viz., “became overdue”. Further, we have added a section [on the lines of s. 36(3) of the English Act] laying down the test to be applied in determining when an instrument payable on demand becomes overdue⁴.

1. Negotiable Instruments in British India, 2nd Edn., p. 46.

2. Negotiable Instruments Act, 10th Edn., p. 72.

3. *Ram Sarup v. Hardeo*, 50 All. 309 (312) ;

Dungarmull v. Sambhu, A. I. R. 1951 Cal. 55.

4. S. 15, App. I.

52. For reasons to be explained hereinafter, we have added an Explanation to the definition of "holder in due course" to clarify what is meant by the words "defect in title" in the definition.

53. It was suggested by the Indian Banks Association that the words "without negligence" should be omitted from the definition of "payment in due course". But we are unable to accept this suggestion since we agree with the principle enunciated in *Sahu Lalta Prasad v. Campbell*¹ that there should exist an obligation to act without negligence, while making payment of a negotiable instrument. Sec. 10.
"payment,
in due
course".

54. Since the existing definition of a "foreign instrument" in section 12 explains it with reference to the definition of "inland instrument" in section 11, we have combined the two sections for a better understanding of the two terms. Secs. 11-12.
"Inland"
and "Fo-
reign"
instruments.

55. The alterations recommended in section 13 relating to "negotiable instrument", are merely formal: sub-section (1) has been taken out to form a definition of "negotiable instrument", referring to the three kinds of instruments,—bills, notes and cheques. The first two Explanations to sub-section (1) have, similarly, been taken out to make two separate definitions of "Instruments payable to bearer" and "payable to order". Sec. 13.
"Negotiable
instrument".

The third Explanation to sub-section (1), and sub-section (2) have been included in two separate sections².

56. The definition of "negotiation" has been shifted to the Definition Clause, with only verbal changes. Sec. 14.
"Negotia-
tion".

57. The definition of "indorsement" has similarly been transferred to the Definition Clause, with verbal changes. Sec. 15.
"Indorse-
ment".
The definition of "indorsee" is at present included in section 16(1) and refers exclusively to the indorsee of an

1. (1905) 9 C. W. N. 841.

2. Secs. 18 and 25 of App. I.

'indorsement in full' (otherwise known as special indorsement). In fact, however, the word 'indorsee' is used to denote "not only the person to whom a bill is specially indorsed, but also the bearer of a bill indorsed in blank—that is, any person, who makes title to a bill through an indorsement¹". It is in this wider sense, that the word 'indorsee' is used even in several other sections of our Act, e.g., section 87. We have, accordingly, made the definition of indorsee a part of the definition of indorsement in general.

Sec. 16. 58. That portion of sub-section (1) of section 16 which deals with indorsement "in blank" and "in full" has been shifted to the Chapter on Negotiation² because it describes different kinds of indorsement. The wording has also been changed in the light of section 34(1)-(2) of the English Act.

As stated before, the remaining portion of sub-section (1) has been tacked on to the definition of indorsement.

Sub-section (2) has been made an independent section³ in the Chapter on Negotiation.

Sec. 17. 59. No change is proposed in section 17.

Sec. 18. 60. To section 18, we have added a Proviso, in the light of section 17(1) of the American Uniform Negotiable Instruments Law, to make it clear that if the words are ambiguous and uncertain, reference may be had to figures to fix the amount.

61. We have added two new sections relating to signatures.

One of them provides that a person may sign in a trade or assumed name and become liable on such instrument. In the absence of a specific provision corresponding to section 23(1) of the Bills of Exchange Act, our Courts had to rely on general principles to come to a similar conclusion⁴.

1. Chalmers, 12th Ed., p. 9 : Halsbury, 3rd Ed., Vol. 3, p. 146.

2. See s. 34 of App. I.

3. See s. 35 of App. I.

4. *Zujya v Manrohan*, A. I. R. 1940 Bom 164.

'We have thought it better to engraft a specific provision¹ as in the English Act.

The other section² deals with the effects of a forged or unauthorised signature. Though we have no provision corresponding to section 24 of the English Act, our Courts have held³ that forgery conveys no title. Several Chambers have suggested that we should have a specific provision in this behalf instead of leaving it to case-law. We have, accordingly, adopted the provisions of section 24 of the Bills of Exchange Act.

Sec. 19.

62. We have replaced section 19 and the first part of section 21 by a comprehensive provision⁴, in the light of section 10 of the Bills of Exchange Act, including the various circumstances in which an instrument is payable on demand.

63. We have also engrafted a new provision⁵ following section 36(3) of the English Act, to explain when an instrument payable on demand shall be deemed to be overdue, for reasons already explained.

64. As stated before, we have added another new provision⁶ to explain what is meant by "payable at a determinable future time".

65. There is no provision in our Act relating to ante-dating and post-dating as in section 13(2) of the English Act. But notwithstanding the absence of such a provision, the Privy Council, in the *Bank of Baroda case*⁷, held that post-dated cheques are not invalid. The practice of ante-dating and post-dating cheques seems to be prevalent in this country, as in other countries, though there is no statutory recognition of such practice in India. One of the Chambers of Commerce has suggested that we should make a provision

1. See s. 26 of App. I.

2. See s. 27 of App. I.

3. See *Venkateswarlu v. Hymavatamma*, A. I. R. 1944 Mad. 471.

4. See s. 14 of App. I.

5. See s. 15 of App. I.

6. See s. 17 of App. I.

7. *Bank of Baroda Ltd., v. Punjab National Bank Ltd.*, A.I.R. 1944 P.C. 58.

treating such instruments as valid. We have thought it necessary to give statutory recognition to the practice by inserting a section¹ on the lines of section 13(2) of the Bills of Exchange Act. But even in England, ante-dating may amount to forgery where the object is to defraud a third party². We have, accordingly, improved upon the English provision by adding that an ante-dated or post-dated instrument will not be valid where it is done for an illegal or fraudulent purpose.

Sec. 20. 66. Substantial changes had to be made in section 20, relating to inchoate instruments:

- (a) The section has been split up into several sub-sections for convenience of reference.
- (b) In a recent Bombay case³ it was pointed out that the word 'holder' in this section was creating some difficulty inasmuch as, in this context, the word only means the person who receives the paper and not a "holder" as defined in the Act. We have made this clear by verbal changes.
- (c) Both in the Bills of Exchange Act (s. 20) and the uniform Negotiable Instruments Law (s. 14) certain additional conditions are mentioned for inferring an authority to complete such instruments. These should be inserted in our Act in order to clarify the position. These are—
 - (i) That the delivery of the inchoate instrument must be made "in order that it may be converted into a negotiable instrument". (In the absence of such words, a person to whom an inchoate instrument is delivered for some other purpose, *e.g.*, safe custody, may be in

1. — See s. 19 of App. I.

2. *Vide* Chalmers, Bills of Exchange, 12th Ed., p. 36.

3. *Terachand v. Sikri Bros.*, A. I. R. 1953 Bom. 290.

a position to utilise the section to his advantage.)

- (ii) That it must be filled up "within a reasonable time and strictly in accordance with the authority given", but that in case of negotiation to a holder in due course after completion of the instrument, no such objection should lie against the holder in due course.

We have inserted these conditions into the section¹.

67. There is another material difference between the provision in s. 20 of our Act and the corresponding provision in s. 20 of the Bills of Exchange Act. The first paragraph of sub-sec. (1) of sec. 20 of the English Act is confined to the completion of an instrument where there was a blank paper delivered by the signer so that it might be converted into a bill. The delivery of such a paper under the circumstances is treated as a *prima facie* authority to fill it up as a complete bill for any amount the stamp will cover. The provision in section 20 of our Act substantially corresponds to the said sub-section of the English section.

But the provision in the English Act has a second limb under which, if a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission. It has been suggested to us that this part of the English provision should also be incorporated into our Act, but we are unable to accept that suggestion for the following reasons. Our Act speaks of the paper being either wholly blank or "having written thereon an incomplete negotiable instrument", that is, partly blank. The definition of indorsement in section 15 of our Act refers to signature on a stamped paper intended to be completed as a negotiable instrument and the person so signing is treated as an indorser. Both these provisions under the Indian law deal with an incomplete instrument and not an instrument which is otherwise complete except for a material particular.

1. See S. 20 of App. 1.

In England, in a case where a bill payable to a drawer's order contained the signature of a person who intended to become answerable if the acceptor defaulted in payment and thereafter the drawer indorsed the instrument, the question arose whether the first indorser would be liable to the second or not. It was decided by the House of Lords¹ that it was an instance of a material particular not being filled in though the instrument was otherwise complete, and, therefore, under s. 20 of the English Act the drawer had authority to indorse and as the indorsement by the drawer in point of time was later to the earlier indorsement, it should prevail. This was followed in another case². A situation in this form may not directly arise in India under the existing law. The only question under the Act will be whether it was a wholly blank or partly blank instrument bearing stamp. If the person had signed intending to be an indorser, he will be an indorser; if he signed intending to make himself liable in any other capacity, he will be liable in that capacity.

Even under the English and the American law, the person who receives the paper and fills it in is not treated as a holder in due course. It is only a person who takes an instrument which is regular and complete on its face who can be a holder in due course³.

We do not, therefore, see any reason to alter the law on this point.

Sec. 21.
"At sight"
etc.

68. As stated before⁴, the earlier part of section 21, relating to instruments on demand has been incorporated into a new section⁵. The latter part of the section, relating to the expression "after sight" has been retained as it is.

69. Since we have introduced the words "on demand or at a fixed or determinable future time" in the definitions of bill of exchange, and promissory note, these words require

1. *Macdonald & Co. v. Nash & Co.*, (1924) A. C. 625.
 2. *National Sales Corp'n. v. Bernardi*, (1931) 2 K. B. 188.
 3. Chalmers, *Bills of Exchange*, 12th Ed., p. 48.
 4. *Yide* para. 62, *ante*.
 5. S. 14 of App. I.

an explanation. We have, accordingly, added a section¹ on the lines of section 11 of the English Act.

70. We have split up the contents of section 22, and removed its first part to the Definition Clause, without any change. Sec. 22.
"Maturity".

As regards the second part of the section, dealing with days of grace, we have amalgamated it with the provisions of sections 23, 24, and 25 into a new section² to give a comprehensive view of all the rules for determining when a bill or note not payable on demand falls due.

71. We have received conflicting suggestions relating to the provision for days of grace. Days of
grace.

One view is that no days of grace should be allowed at all and the reason assigned is that if a person contracts to pay the amount due under an instrument on demand he could as well have fixed a time limit to suit his convenience. This view has the support of Chalmers³. The Geneva Convention of 1930 has also abolished days of grace.

The Bharat Chamber of Commerce, Calcutta, and the Indian Merchants Chamber, Bombay are, however, against any alteration and are of the view that days of grace should be retained as merchants have become accustomed to this.

The Bengal National Chamber of Commerce has, on the other hand, suggested that this provision should be made subject to variation by contract, if any, between the parties.

We are of the opinion that any alteration of the existing provision would lead to confusion in dealing between the merchants, and do not, accordingly, recommend any change relating to days of grace.

72. No change is considered necessary in sections 23-24. Secs. 23-24.

73. In section 25, we have substituted the words "succeeding business day" for "next preceding business day". Sec. 25.
Section 10 of the General Clauses Act (X of

1. S. 17 of App. I.

2. S. 29 of App. I.

3. Chalmers, Negotiable Instruments Act, Introduction to the First Ed., p. 18.

1897) provides that where a law require ~~something~~ to be done in any office on or within a certain day on which the office happens to be closed, the Act may be considered as duly done if it is done on the next day on which the office is open. Section 25 of the Negotiable Instruments Act which lays down a contrary rule for commercial transactions, causes inconvenience to the business people and all the Chambers of Commerce have urged the change we have proposed. It is to be noted that the Geneva Convention has also adopted the "succeeding business day" rule.

Sec. 26. 74. We are of the opinion that not much purpose is being served by the first paragraph of section 26.

Where there is no codified law relating to contract it may be necessary in an Act relating to negotiable instruments to enumerate the general principles of the law of contract which are applicable to negotiable instruments. The Bills of Exchange Act, therefore, enacted provisions dealing with capacity and authority of parties, consideration and other matters which are governed by the law of contract. Similar provisions were reproduced in our Negotiable Instruments Act, even though we had our law of contract codified prior to that Act. In our opinion, it is necessary to include in our Act provisions relating to matters such as what constitutes good consideration or when consideration is illegal or capacity of parties and so on. It is, however, necessary to include in this Act such of the provisions as modify the law under the Contract Act, as for example, s. 39. To make this provision clear we have proposed¹ that the provisions of the Contract Act save in so far as they are not inconsistent with the provisions of this Act should apply to all negotiable instruments. Such a provision, though unnecessary², is not uncommon in Indian legislation (*vide* Transfer of Property Act, s. 4 and Sale of Goods Act. s. 3)

1. S. 5 of App. I.

2. Cf. *Subbanarayana v. Ramaswami*, 28 Mad. 244.

75. As regards minors, the existing provision puts forth a proposition which is directly contradictory to the principle laid down in section 11 of the Contract Act. We think the import of the second paragraph of section 26 would be better conveyed if modified, as we have done¹, in the light of sub-section (2) of section 22 of the Bills of Exchange Act.

76. The third paragraph of section 26 has been taken out to form a separate section², with verbal changes making it clear that a corporation's power to draw, indorse or accept an instrument is limited to the extent of its authority recognised by the law for the time being in force relating to corporations. Thus, section 47 of the Companies Act, 1956, prescribes the extent and limits of the power of companies registered under that Act.

77. No change has been proposed in section 27 except Sec. 27. that instead of the words "as mentioned in section 26" explanatory words have been substituted to elucidate the meaning of the section that anybody who is capable of being bound by a transaction relating to a negotiable instrument may be so bound either by his own act or by the act of his duly authorised agent.

78. We have introduced a new provision relating to partners to make it clear that the partner's authority extends to bind all the partners of the firm in the case of an instrument made in the name of the firm. If it is not made or drawn in the name of the firm, the other partners cannot be made liable³.

79. We have introduced a separate Chapter⁴ on liability of parties and included all the provisions of the Act relating to liability in that Chapter. A negotiable instrument is a composite contract. There is the original contract under which the instrument is made and added to it are the

1. S. 6 of App. I.

2. S. 7 of App. I.

3. *Rangaraju v. Devi Chand*, A. I. R. 1945 Mad. 439.

4. Ch. V of App. I.

supervening contracts of the acceptor in the case of a bill and indorsers in the case of all instruments. The liability of the original parties is different from that of the subsidiary parties under supervening contracts. The liability of the different parties arises if and when certain conditions are fulfilled by the holder. We have first defined the liability of each of the parties and then stated the conditions under which such liability arises.

The manner and method of carrying out the conditions such as presentment for acceptance in the case of bills, presentment for payment, notice of dishonour for non-acceptance and non-payment and the circumstances under which such presentment either for non-acceptance or non-presentment is excused have been relegated to separate chapters as they are more or less of a procedural character though quite essential to the accrual of the liability. This is made clear in an introductory provision¹.

80. The position of a stranger signing an instrument and his liability are nowhere stated in the Act. A presumption is laid down in s. 63 of the American Uniform Negotiable Instrument Law that such a person should be presumed to be an indorser unless a contrary intention is expressed. In our opinion, this presumption is founded on sound principle and is conducive to the certainty of the law. We have, accordingly, inserted a new section² embodying this presumption.

Sec. 28. 81. Section 28 does not specify the manner in which an agent should indicate that he has signed as an agent so as to exclude his personal liability. Nor have any definite tests been laid down by our Courts so far.

In section 26(1) of the English Act it is provided that where a person signs a bill as drawer, indorser or acceptor, and adds words to his signature, indicating that he has signed for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition

1. S. 54 of App. I.

2. S. 54 of App. I.

to his signature of words describing himself as an agent, or as filling a representative character, does not exempt him from personal liability. It is to be gathered from the instrument whether the covenant to pay is, in essence, given by the person executing the document on his own behalf or on behalf of some other. We have, accordingly, adopted the provision in section 26(1) of the English Act, with some verbal modifications¹.

82. No change is proposed in section 29.

Sec. 29

83. There is no section in the Act which defines the liability of the bearer who negotiates an instrument. In the case of an instrument payable to bearer, he can negotiate it by mere delivery. He is not an indorser, and therefore he does not become liable under the instrument by reason of the negotiation. As section 58 of the English Act says, he is only a transferor by delivery and is not liable on the instrument as his name does not appear on it. His only liability is that he warrants by his negotiation that he has the right to transfer the instrument and that at the time of the transfer he was not aware of any fact which renders it valueless, and no more. We think it is necessary to engraft a provision so defining the liability of a bearer who negotiates an instrument payable to bearer and we have, accordingly, added a section² on the lines of section 58 of the English Act.

84. We have taken sections 30—32 and 41 together and replaced them by three provisions³ dealing with the liability of—(a) drawer and acceptor of a bill, (b) drawer and drawee of a cheque, and (c) maker of a note, respectively. Secs. 30—32;
41.

We have redrafted sections 30 and 31 in the light of section 55(1)(a) of the Bills of Exchange Act. Our Act

1. S. 66 of App. I.

2. S. 68 of App. I.

3. S. 55, 57, and 58 of App I.

nowhere says that the drawee is not liable until acceptance though it is assumed in various sections. We have made this clear in a new sub-section.

In section 32 verbal changes have been made in the light of section 54(1) of the English Act, relating to the acceptor's liability. The provision in section 41 of our Act, which also relates to the acceptor's liability, has been placed in the same section¹.

Secs. 33—44. 85. Since the provisions in sections 33-34 relate only to a bill of exchange, they have been placed in Part II of App. I, without any change.

86. Sections 34 as well as 91 assume the possibility of Joint drawees but there is no specific provision in our Act corresponding to section 6(2) of the Bills of Exchange Act (or section 128 of the Uniform Negotiable Instruments Law) to indicate the proper mode of addressing a bill to two or more drawees. Since the principle embodied in the English provision is not inapplicable in India we have incorporated it in a new section².

87. Similarly, we have no provision in our Act corresponding to section 5(1) of the English Act to provide that a bill may be drawn payable to the drawer or the drawee or to the order of either. Though the words 'certain person' in section 5 of our Act are wide enough to include the drawer or drawee, we have made this clear by inserting a new provision³.

Sec. 35. 88. We have redrafted section 35, relating to the liability of the indorser⁴ in the light of sec. 55(2) of the Bills of Exchange Act.

Sec. 36. 89. We have inserted the words "the acceptor and" at the beginning of section 36, to make it clear that the acceptor

1. S. 56(4) of App. I.

2. S. 111 of App. I.

3. S. 112 of App. I.

4. S. 59 of App. I.

is liable even though his acceptance may take place subsequently to the holder's getting possession of the instrument¹.

90. We have combined sections 37 and 38 into one Secs. 37-38. section² since the provisions are complementary in their nature, dealing with parties who are liable on the instrument as principal debtors or sureties.

We have also inserted a new section³ to indicate which of the provisions relating to liability are subject to the provisions of "a contract to the contrary" instead of repeating those words in each of those sections.

91. No change is recommended in section 39.

Sec. 39.

The section gives the holder the power to expressly reserve his rights to charge the other parties when he enters into such a contract with the acceptor as would have the effect of discharging the surety under s. 134 or 135 of the Contract Act. This variation from the law in s. 134 or 135 of the Contract Act is restricted only to the case of a contract between the holder and the acceptor of a bill of exchange. It was, however, suggested that this liberty to reserve the right to charge the other parties and prevent the discharge of the surety when there is an alteration of the contract between the principal debtor and the principal creditor should be extended to other cases also, such as the holder and the maker of a promissory note. Curiously, in a decision of the Madras High Court⁴ it was held that section 39, though it is confined to bills of exchange, has not abrogated the common law principle, namely, that when a contract between the principal creditor and the principal debtor which discharges the latter reserves the right of the creditor against the surety, the surety is not discharged by the variation of the contract between the principal debtor and the creditor. This view makes the section otiose. Neither

1. S. 63 of App. I.

2. S. 60 of App. I.

3. S. 61 of App. I.

4. *Bank of Hindusthan v. Govindarajulu*, (1933) 57 Mad. 482.

s. 134 nor s. 135 of the Contract Act recognises such a right of reservation.

In fact, if the law has been correctly laid down in the Madras decision, there is really no need to extend the provisions of section 39 to other cases. If, on the other hand, the law in India be different from the English common law, we see no reason to extend the privilege to other cases as it would result in great hardship to the surety if the entire burden were to be thrown upon him either by discharging the principal debtor or by giving up rights against him in any other manner. The right of contribution which accrues under section 140 of the Contract Act to the surety after he discharges the debt is no consolation to him if he should be treated as the principal debtor. Under section 134, the surety is automatically discharged whether there is a reservation or not. We think, therefore, that there is no justice or equity in favour of the extension of the scope of section 39 to other cases.

Secs. 40-41. 92. No alteration other than a rearrangement has been proposed in sections 40-41. Section 40 has been transferred to the Chapter relating to Discharge¹ and section 41 to the Chapter on Liability².

Sec. 42 93. The provisions of section 42 have been transferred to the Chapter on Bills of Exchange, without any change³.

Secs. 43—45. 94. As has been already indicated, sections 43—45 have been included in the Chapter relating to Form and Interpretation⁴ except the two Exceptions to section 43 which have been included in the Chapter on Liability of Parties⁵, with verbal changes.

Exception I to section 43 refers to an accommodation party but it requires to be supplemented as it does not contain

1. S. 78 (3), App. I.

2. S. 56 (4), *ibid.*

3. S. 116, *ibid.*

4. Ss. 10-12, *ibid.*

5. S. 64(3), *ibid.*

all the relevant provisions relating to such a party. In the Chapter on Liability we have introduced two new provisions to indicate the liability of the accommodation party and the accommodated party, respectively. The first¹ follows section 28(2) of the English Act. The second² follows from the principle embodied in section 140 of the Contract Act, viz., that the relationship between an accommodation party and the accommodated party being one of surety and principal debtor, the former should be entitled to recover any amount paid by him, from the latter.

95. The words 'parties standing in immediate relation' are used in sections 44, 45 and 46, but there is an Explanation of the expression only in section 44 while there is none in s. 46; nor is there anything in section 46 to indicate that the same Explanation is applicable to it.

Since the Explanation is based on the English decisions which are of a general application³, we have transformed the Explanation into a separate section laying down a rule of interpretation of the expression, wherever it is used in the Act.

96. Though it may be somewhat impracticable to Sec. 45A. enforce by suit the right conferred by section 45A, we have thought it safe to retain the section, and even to extend it to all instruments; for, there is no justification to restrict it to a bill. In *Baldeo v. Grish*⁴, a case before the Act, the right to a duplicate of a cheque was recognised and this was followed in *Udho Ramchandi v. Hemraj*⁵, in the case of a lost hundi. We have followed these decisions in widening the provision⁶.

97. No change has been proposed in the first three paragraphs of section 46. Secs. 46-48.

1. S. 64 (1), App. 1.

2. S. 64. (2), *ibid.*

3. *Vide* Chalmers, Bills of Exchange, 12th Ed. p. 95.

4. 2 All. 754.

5. A.I.R. 1924 Lah. 198.

6. S. 53 of App. 1.

The last two paragraphs of section 46 and sections 47 and 48 deal with the modes of negotiation for different kinds of instruments, with some repetition. We have combined them into a single section¹. The Exception to section 47 has been made a separate section².

An introductory section³ has also been proposed, specifying the different kinds of indorsements.

Sec. 49. 98. Some drafting changes have been made in section 49, following section 34(4) of the English Act⁴.

Sec. 50. 99. Section 50 has been recast in order to simplify it. It consists of two parts. The latter part refers to a restrictive indorsement but does not explain what constitutes a restrictive indorsement. There is no provision in our Act corresponding to section 35 of the Bills of Exchange Act or section 36 of the Uniform Negotiable Instruments Law. We have remedied this lacuna by adopting a new provision⁵ which combines the principles embodied in the English and American provisions, just cited.

The earlier part of section 50 gives the effects of or the rights following from indorsement. In the new section⁶ which represents that part, we have made it clear that the effect, which is generally stated, is subject to the provisions relating to restrictive, conditional and qualified indorsements.

Sec. 51. 100. Since we have defined 'holder' as including payee and indorsee, we have avoided repetition of these words in section 51 by using the word 'holder' in their place⁷.

Sec. 52. 101. The contents of section 52 have been split into two sections as they deal with two separate matters, viz., conditional⁸ and qualified⁹ indorsements.

1. S. 30, App. I.
 2. S. 42, *ibid.*
 3. S. 33, *ibid.*
 4. S. 36, *ibid.*
 5. S. 39, *ibid.*
 6. S. 45, *ibid.*
 7. S. 31, App. I.
 8. S. 40, *ibid.*
 9. S. 41, *ibid.*

As regards a conditional indorsement, we have no provision in our Act corresponding to section 33 of the Bills of Exchange Act and section 39 of the Negotiable Instruments Law which make the conditional indorsement operative only as between indorser and indorsee and give the payer (acceptor or maker) the liberty to pay the indorsee regardless of the condition. There is no such liberty to the payer in India. As has been pointed out by Bhashyam and Adiga¹, the Indian law is still based upon the old common law rule² which has been discarded both in England and the U.S.A. The old rule operates harshly upon the acceptor of a conditional indorsement who is not in a position to discover whether the condition has been fulfilled and yet cannot dare dishonour the instrument.

There is no reason why we should not adopt the modern principle as embodied in the English and American law. We have, accordingly, adopted that principle in two new subsections.

102. Following section 38 of the English Act, we have introduced two new sections³, which together state the rights of 'holder' and 'holder in due course' which have now to be gathered from different provisions of the Act.

103. There is no provision in our Act, corresponding to section 37 of the Bills of Exchange Act, giving the effects of 'negotiation back before maturity'. Under the English provision, if there is negotiation back of the instrument before maturity to the maker, drawer or to a prior indorsee or to the acceptor, such persons are entitled to further negotiate the instrument. But it would be inequitable to allow a right to enforce payment under the instrument against any of the parties who were liable before the instrument was indorsed back. This is avoided by the latter part of the English section. We have incorporated the two parts

1. Negotiable Instruments Act, 1956, 10th Ed., p. 303.

2. *Robertson v. Kensington & ors.*, (1811) 4 Taunt, 30 ; Byles on Bills of Exchange, 21st Ed., p. 169.

3. Ss. 47 and 52, App. I.

of the English provision in two sections, one explaining what is negotiation back¹ and the other, the rights of a person who acquires an instrument through the process of negotiation back².

Sec. 53. 104. Section 53 has been redrafted³ in the light of section 29(3) of the Bills of Exchange Act, to make the meaning more clear. The English provision expressly states that a person who is a party to any fraud or illegality affecting an instrument cannot be a holder in due course.

We have added a new sub-section, on the lines of sub-section (3) of section 38 of the English Act, to explain the rights of a holder whose title is defective. What is a defective title is explained in another provision⁴.

Secs. 54—55. 105. No alteration has been proposed in sections 54-55.

Sec. 56. 106. We have recast section 56 to make it clear that the existing provision is only an exception to the general rule that a transfer by endorsement must be of the entire rights in the instrument. In redrafting⁵ the section, we have followed sub-section (2) of section 32 of the English Act.

Sec. 57. 107. No change is proposed in section 57.

Sec. 58. 108. There is no definition of “defective title” though the expression is used in the definition of “holder in due course”. We have already provided⁶ that a forged instrument conveys no title. If the title is acquired by means of an offence or fraud or for an unlawful consideration the title is only defective and the person holding such title may convey a better title to a holder in due course. This is provided in section 58. We have retained that section, subject to verbal changes⁷.

1. S. 44, App. i.

2. S. 48, *ibid.*

3. S. 51, *ibid.*

4. S. 28, *ibid.*

5. S. 32, *ibid.*

6. Para. 61, *ante.*

7. S. 28, App. I.

109. The two paragraphs of section 59 deal with two different matters. They have, accordingly, been placed under two separate sections. Sec. 9.

What is meant by the words 'rights of his transferor' in the first part is that the holder who acquires an instrument after dishonour or after maturity, acquires the instrument 'subject to the equities to which his transferor was subject at the time of acquisition by such holder'. We have added these words, by way of abundant caution, to make the meaning clear¹.

The second part, which is at present in the nature of a Proviso is, in fact, a substantive provision as to the rights of a person who becomes the holder of an accommodation instrument, after maturity. No change is proposed in this provision².

110. No change is proposed in section 60, except to include a reference to a restrictive indorsement which is also one of the modes of termination of negotiability, as would appear from another provision, namely, section 50.

111. We have replaced section 61 by a comprehensive provision³ and have incorporated therein other rules relating to presentment for acceptance which are now dispersed over several sections. Sec. 61.

Since presentment for acceptance is a special incident of bills of exchange, we have included all the provisions relating to presentment for acceptance in Part II which deals with such instruments in particular.

112. Section 61 of the Act makes it obligatory upon the holder to present a bill for acceptance only in the case of a bill payable after sight. In that case presentment for acceptance is absolutely necessary to fix the date for payment. In the case of other bills there is no express provision

1. S. 49, App. I.

2. S. 50, *ibid.*

3. S. 120, *ibid.*

in the Act requiring presentment for acceptance before presenting them for payment. But this omission has been held to be a drafting defect in several decisions starting with *Veerappa v. Vellayan*¹, where it has been held that presentment for acceptance must precede presentment for payment in the case of every bill, in order to fix the drawee with liability. In the Madras Case¹, this view was supported by pointing out that sections 91 to 93 of the Act were applicable to bills payable on demand as well.

Recently, the Supreme Court had an occasion to examine the question in *Jagjivan v. Ranchhoddas*². Reference was made in that decision to sections 61 and 64 of the Act and it was observed that in the case of a bill payable after sight there are two distinct stages, firstly, when it is presented for acceptance and later, when it is presented for payment; section 61 deals with the former while section 64 deals with the latter. The observation of the Bombay High Court in *Ram Ravji v. Pralhaddas*³ that “presentment for acceptance must always and in every case precede presentment for payment” was noticed and the comment made by the learned Judges of the Supreme Court was that in the case of a bill payable on demand both stages synchronise and there is only one presentment which is both for acceptance and payment. Had the learned Judges stopped there the matter would not have created any difficulty. But they proceeded to observe:

“But whether the bill is payable after sight or at sight or on demand, acceptance by the drawee is necessary before he can be fixed with liability on it. It is acceptance that establishes privity on the instrument between the payee and the drawee and we agree with the learned Judges of the High Court that unless there is such acceptance, no action on the bill is maintainable by the payee against the drawee”.

1. (1919) M. W. N. 780.

2. A. I. R. 1954 S. C. 554.

3. (1895) 20 Bom. 133(141).

In view of the above observation of the Supreme Court and the defective provisions of the Act, we are of the opinion that the law should not be left in a dubious state and effect must be given to the decision of the Supreme Court, making it obligatory in the case of every bill to present it for acceptance before it is presented for payment. The drawee can be made liable only if he accepts. If the bill is dishonoured by non-acceptance no question of any presentment for payment arises. We have, accordingly, inserted a provision¹ that a bill must be presented for acceptance before it is presented for payment.

113. That part of section 61 which deals with the duty of presentment for acceptance of a bill payable after sight has been taken out to form a separate provision² in the light of section 40(1)-(2) of the English Act to make it clear that if the holder does not either present it for acceptance or negotiate it within a reasonable time, the drawer and all indorsers prior to that holder shall be discharged.

114. As regards the persons by whom and to whom presentment for acceptance is to be made, we have substituted a clearer provision³, combining the relevant provisions in sections 61 and 75.

115. As to the place of presentment for acceptance, the provision in para. 3 of section 61 is not adequate. Elaborate provisions relating to place of presentment for payment are contained in sections 69, 70 and 71. We have adopted similar rules for presentment for acceptance⁴

116. We have also thought it necessary to engraft a provision⁵ on the lines of section 41(1)(b), relating to presentment to joint drawees.

117. We have also adopted a detailed sub-section⁶ including all the cases where presentment is excused. It would

1. S. 117, App. I.

2. S. 119, *ibid.*

3. S. 120(1) (a), *ibid.*

4. S. 120(1) (b), *ibid.*

5. S. 120(1) (c), *ibid.*

6. S. 120(3), *ibid.*

appear from section 91 that where presentment is excused, a bill is deemed to be dishonoured by non-acceptance. As to the cases where such constructive dishonour takes place, we have two instances contained in paragraphs 2 and 3 of section 61, but there is no provision enumerating the cases where presentment is excused. The provisions in sub-section (2) of section 41 of the English Act being elaborate on this point, we have adopted them, with the addition of the case specified in section 39(4) of that Act. The rule relating to delay being excused has been taken from section 75A which combines the rules in respect of both presentment for acceptance as well as for payment. There being an enumeration of cases where presentment for acceptance is excused, it has become necessary also to incorporate the provision in section 41(3) as to when presentment is not excused.

118. No change has been proposed in the fourth paragraph of section 61.

119. There is no specific provision in the Act stating the effects of the acceptance of a bill after it has become overdue, although from some of the provisions of the Act it would appear that such an acceptance is not void.

Section 18(2) of the Bills of Exchange Act as well as section 138 of the Uniform Negotiable Instruments Law specifically state that "A bill may be accepted* * * * *when it is overdue or after it has been dishonoured by a previous refusal to accept or by non-payment".

Clause (2) of section 39 of the Bills of Exchange Act speaks of the presentment for acceptance of a bill payable elsewhere than at the residence or place of the business of the drawee and clause (4) of the same section provides¹ as follows:—

"Where the holder of a bill, drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day

¹ See section 147 of the Negotiable Instruments Law.

that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawers and indorsers."

This shows that the drawer and indorsers would be discharged in any other case. This view finds support from Chalmers¹ who observes—"A bill should clearly be presented for acceptance before maturity. It may be accepted when overdue. Such acceptance preserves or revives the liability of the drawer and indorsers only in the case provided by section 39(4) *i.e.* domiciled bill arriving late." The same view is taken by Halsbury: "the drawee may, however, accept when the bill is overdue, if he is willing to do so²." "The want of presentment, however, will result in the holder losing his right of recourse against the drawer and indorsers. . . . , except in the case of bill drawn payable elsewhere than at the place of business or residence of the drawee where the holder has not time to present for acceptance before he has to present the bill for payment³."

There being no provision in our Act which is inconsistent with the propositions discussed above, we have thought fit to remove all doubts by adding a new section⁴ providing that the acceptance of an overdue bill is not void but such acceptance does not preserve or revive the liability of a drawer or indorser who would be discharged by reason of non-presentment of the bill before maturity.

120. We have transferred the contents of section 62 to the new Part on Promissory Notes, with verbal changes⁵. Sec. 62.

121. We have combined the provisions of section 63 with those of section 83, since the latter section states the consequences of allowing more time than as prescribed in section 63. Sec. 63.

1. Bills of Exchange, 12th Ed., p. 132.

2. Halsbury, Laws of England, 3rd Ed., Nol.

3. Halsbury, *ibid.*, p. 194, f.n. (f).

4. §. 118, App. I.

5. S. 140, *ibid.*

Sec. 64.

122. While presentment for acceptance relates only to bills, presentment for payment is a condition common to all instruments. We have, therefore, separated the provisions relating to the two kinds of instruments.

The provisions of section 64 have been modified to explain more clearly where presentment for payment is or is not necessary¹. The Exception has been redrafted in order to obviate the conflict of judicial opinion which has arisen as to its scope².

Further, we have grouped together, with suitable verbal changes, the rules relating to presentment for payment in one section³ with different clauses relating to the persons by whom and to whom presentment is to be made, and the time, hour and place of presentment, following the plan we have adopted with respect to presentment for acceptance.

The latter part of the first paragraph of section 64 states a rule of discharge for non-presentment. We have, accordingly, shifted it to the Chapter on Discharge, with verbal changes to make it comprehensive⁴.

123. We have added a new provision⁵ laying down clearly what constitutes presentment for payment. Several Chambers have urged that since usage varies regarding the mode of presentment, there should be a definite provision in the Act. Difficulty is often experienced in having to send the original instrument for presentment. It is risky to send the original as it may be lost or it may not be returned. We have, therefore, suggested that the sending of a copy would be sufficient but that the inspection of the original may be demanded; and if, on demand, the holder fails to produce it for inspection within a reasonable time the presentment shall be deemed to be invalid.

1. S. 69, App. I.

2. Cf. *Oudh Commercial Bank v. Gur Din*, 59 I. C. 404; *Ramkrishnaya v. Kasim*, 13 Mad. 172; *Manik v. Parkash*, 45 C. W. N. 545.

3. S. 73, App. I.

4. S. 79, *ibid*.

5. S. 74, *ibid*.

Under paragraph 2 of section 64, personal presentment is obligatory unless presentment through post is authorised by agreement or usage. As pointed out by some of the Chambers of Commerce, the existing provision is somewhat restrictive in view of the changed conditions of commercial intercourse. There is no apparent reason why the use of postal communication should depend on agreement or usage. We have left it to the option of the party, who is to make the presentment, to adopt any effective means convenient to him.

124. Apart from the rearrangement referred to above, Secs. 65-67. no other change is proposed in respect of sections 65, 66 and 67, except the omission from section 67 of the words "and non-payment maturity", which have created some confusion and are considered by us to be unnecessary.

125. We have combined¹ sections 68 and 69, because there is no substantial distinction between the circumstances contemplated by the two sections and these separate provisions complicate the matter. It is not clear from what source the provision in section 68 has been drawn. If an instrument is payable at a specified place, it follows that it is not payable 'elsewhere'.

126. We have introduced a new provision² on the lines Sec. 70. of section 45(4)(b) of the Bills of Exchange Act to deal with the case where no place of payment is specified but the address of the maker, acceptor or drawee is given in the instrument. Section 70 of our Act has been modified by us to deal with the case where even such address is not given in the instrument³.

127. Verbal alterations have been proposed in section 71 Sec. 71. to indicate that it is the residuary provision⁴ relating to the place of presentment.

128. We have added an Explanation⁵ to clarify what is meant by the words "specified place" in the foregoing group

1. S. 73(6)(i), App. I.

2. S. 73(6) (ii), *ibid*.

3. S. 73(6) (iii), *ibid*.

4. S. 73(6)(iv), *ibid*.

5. Expl. to S. 73, *ibid*.

of provisions as there are conflicting decisions regarding the interpretation of these words¹. The question arose particularly where the name of a town was mentioned without giving any address within the town. In conformity with the result of these decisions, we have provided that "specified place" means a place described with sufficient particularity in the instrument to enable the person presenting an instrument to identify the place where the person sought to be charged with liability is to be found. It is not sufficient merely to say, for example, "city of Calcutta" but a specified place in that city should be mentioned.

Secs. 72-74. 129. No change, other than verbal, has been proposed in sections 72 to 74.

Sec. 75. 130. Section 75 governs both presentment for acceptance and presentment for payment. As already stated, we have split up the provision and assigned the portions relating to presentment for acceptance to the Chapter on Bills of Exchange. The portion relating to presentment for payment has been included in the Chapter on Presentment for Payment and supplemented by an Explanation on the lines of section 45(6) of the English Act, to cover the case of presentment to more than one person liable on an instrument.

Sec. 75A. 131. No alteration has been made in section 75A, except that it had to be repeated in connection with presentment for acceptance and for payment.

Sec. 76. 132. In section 76, apart from some verbal changes, we have added some new clauses².

(a) Where the drawee is a fictitious person, it is obvious that nobody can be held liable for non-presentment. The new clause (h) imports this rule from section 46(2)(b) of the English Act.

(b) There is no provision in our Act corresponding to section 46(2) of the English Act providing

¹ *Shaik Md. v. Abdul*, A. I. R. 1937 Lah. 259; *Dungarmull v. Shambu*, A. I. R. 1951 Cal. 55.

² S. 75, App. I.

when presentment is not necessary to charge an indorser. This is now provided in the new clause (i).

- (c) The principle which we find in paragraph 2 of section 61 of our Act with respect to presentment for acceptance should also apply as regards presentment for payment. We have, therefore, incorporated the new clause (j), following section 46(2)(a) of the English Act.
- (d) No less important is the provision in the new clause (k), namely, that no question of presentment for payment should arise where a bill has been dishonoured for non-acceptance. This would follow from the principle embodied in section 43(2) of the English Act, which we have adopted¹, that when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorser accrues to the holder, and no presentment for payment is, accordingly, necessary.

An Explanation has been added at the end of the section to embody the rule in section 48(2) of the English Act laying down that the holder's belief that the instrument would be dishonoured even if presented does not absolve him from the duty to present.

133. No change has been made in section 77.

Sec. 77.

134. There is a distinction between discharge of an instrument by payment and discharging of a particular party liable under an instrument. This distinction is not clearly brought out by the provisions of our Act, though some indication of it may be had from section 60. We have re-arranged the several provisions relating to discharge to make this distinction clear.

135. We have grouped together all the provisions relating to discharge by payment in one section²,—including

1. S. 122(2), App. I.

2. S. 76, App. I.

existing sections 78, 82(c) and 89, with modifications. The case of payment of an accommodation instrument has also been included in a new sub-section.

Secs. 79-80

136. As regards interest payable on instruments, no difficulty is experienced when the instrument provides for payment of interest and specifies the rate. The contract between the parties is, however, subject to any law for the time being in force for the relief of debtors which authorises the courts to scale down the interest and give relief to the debtors. Section 34 of the Code of Civil Procedure, on the other hand, gives a discretion to the court regarding interest from the institution of the suit till the date of decree and thereafter till payment. When, however, the contract is silent as regards interest or it refers to interest but does not mention the rate, the question arises whether any rate of interest should be allowed or not. The existing section 80, which deals with this question, is somewhat unintelligible. The difficulty is created by the words—"notwithstanding any agreement relating to the contract between any parties to the instrument" which must necessarily refer to an independent agreement, as the section starts by saying that the provision would apply only when no rate of interest is specified in the instrument. It is also not clear from the section whether it is intended to apply only where the parties contemplated payment of interest under the instrument but did not provide for the rate of interest or also where the contract is silent on both matters. To avoid all these difficulties we have combined sections 79 and 80 with verbal changes and have provided for the two liabilities in one section¹. The provision has also been made subject to the law for the time being in force relating to the relief of debtors and to section 34 of the Code of Civil Procedure.

The Explanation to section 80 has been omitted because on principle there is no basis for making any distinction between the two cases mentioned under sections 79 and 80. If the indorser's liability is as a surety, it must be co-extensive with that of the principal debtor so that there is nothing to

distinguish between the two cases specified in sections 79 and 80. We have, accordingly, considered it fit to omit the Explanation.

137. Except for verbal changes, no alteration has been Sec. 81. recommended in section 81.

138. As indicated earlier, the provisions of clauses (a) Sec. 81 and (b) of section 82 have been included in a new section¹ relating to the discharge of the liability of particular parties. In that section we have also included some other provisions relating to the discharge of particular parties, such as that contained in section 40 and the principle underlying section 90 which has been extended by us to all instruments,—the principle being one of general application, providing for a merger in the case of a union of the rights of the creditor and of the debtor. Another rule² engrafted by us in this section is a corollary from the provision in section 39 of the Act relating to a surety. It states that when the holder of an accepted bill enters into a contract with the acceptor of the nature referred to in section 134 or 135 of the Contract Act, the other parties liable on the bill would be discharged, unless the holder expressly reserves his right to charge them.

139. Since section 83 relates solely to bills of exchange, Sec. 83. it has been transferred to the Chapter relating to bills, and combined with section 63 to which it is complementary.

140. Similarly, section 84, which relates exclusively to Sec. 84. cheques, has been transferred to the chapter dealing with such instruments³, excepting sub-section (2) which has been omitted as being unnecessary in view of the comprehensive provision proposed by us⁴ relating to reasonable time.

141. Sections 85-85A have been transferred to the Secs 85-85A. Chapter on cheques, without any alteration.

1. S. 78, App. I. *ibid*

2. S. 78 (2),

3. S. 155 of App. I.

4. S. 98, *ibid*

Sec. 86. 142. In section 86, we have expressly made provision for the right of the holder to refuse to take a qualified acceptance¹, by adopting sub-section (1) of section 44 of the Bills of Exchange Act.

The first paragraph of section 86, stating the consequences of acquiescence in a qualified acceptance, practically provides a rule relating to discharge. We have, accordingly, shifted this paragraph to the Chapter on Discharge².

No change has been proposed in the Explanation to section 86.

In connection with a qualified acceptance, we have adopted a new provision³, following section 52(2) of the English Act, to make it clear that non-payment for payment in cases of qualified acceptance does not, in the absence of an express stipulation to that effect, discharge the acceptor

Sec. 87. 143. We have redrafted section 87 in the light of section 64(1) of the Bills of Exchange Act, which is more comprehensive.

The proviso, which has been added, is based on the decision in *Gourochandra v. Krushnacharana*⁴, which applied the principle laid down by the Privy Council in *Hongkong and Shanghai Banking Corporation v. Lo Lee Shi*⁵, which was a case of a material alteration resulting from an accident, to the case of a material alteration "made by a meddlesome or maliciously minded stranger without the consent of the holder of the instrument and without any fraud or negligence on his part". The second part of the Proviso retains the existing provision that an alteration made to carry out the common intention of parties should not affect the liability.

Sec. 88. 144 Section 88 has been amalgamated with section 87.

1. S. 123, *ibid.*

2. S. 80, *ibid.*

3. S. 124 of App. 1.

4. A. I. R. 1941 mad. 383 at p. 385

5. (1928) A. C. 181.

145. No change is necessary in the provision in section 89. Sec. 89.
89 in so far as it is applicable to instruments other than
cheques¹.

The part relating to cheques has been taken out and
added as a Proviso² to existing section 129, after modifying
it in the light of the Proviso to section 79(2) of the English
Act.

146. Section 90, as it stands, is confined to bills of Sec. 90.
exchange. As already stated, there is no reason why the
principle of merger by unity of debtor and creditor embodied
therein should not apply to other instruments. We have,
accordingly, made it a general provision³.

147. Since section 91 relates only to bills of exchange Sec. 91.
we have transferred it to Part II of Appendix I. For the
purpose of simplification, we have split the section into
several sub-sections. We have also added a new provision⁴
on the lines of section 43(2) of the English Act as our Courts
have already followed the principle contained therein⁵.

148. Since dishonour may take place either by non-
acceptance or by non-payment, we have inserted an intro-
ductory section⁶ to that effect.

149. In section 92, the cases of constructive dishonour Sec. 92.
already included in section 75 have been referred to in order
to give a comprehensive view of the law⁷.

150. Section 93 deals with dishonour by non-acceptance Secs. 93-94.
as well as by non-payment. Hence, the provision had to be
repeated with necessary modifications in two Chapters,
according to our scheme⁸.

1. S. 76(5) of App. I.

2. Prov. to S. 149, *ibid*.

3. S. 78(1) (c), App. I.

4. S. 122(2), *ibid*.

5. *Ram Ravji v. Prahlad*, (1895) 20 Bom. 133; *Miler v. National Bank of India*, (1891)
19 Cal. 146.

6. S. 83, of App. I.

7. S. 84, *ibid*.

8. Ss. 70, 125, App. I.

As regards notice of dishonour for non-acceptance, we have adopted the provisions of section 48 of the Bills of Exchange Act, to explain clearly the effects of failure to give such notice

That part of section 94 which deals with parties to whom notice is to be given, has been amalgamated with section 93, with some verbal changes to make the meaning clear¹.

The remaining part of section 94 has been placed under three sections², dealing respectively with—(a) the mode of giving notice; (b) the time and place of giving notice; and (c) the effect of miscarriage in post. As to the mode of giving notice we have omitted oral notice in order to impart more certainty to this important act.

Sec. 95. 151. No change has been proposed in section 95.

Sec. 96. 152. Since section 96 also gives a rule relating to the time for giving notice, it has been combined³ with the relevant part of section 94.

Sec. 97. 153. No change is considered necessary in section 97.

Sec. 98. 154. Clause (f) of section 98, which deals with non-negotiable instruments, has been omitted, as such instruments are outside the scope of the Act.

Secs. 99—
104A. 155. There is no substantial change in the Chapter on Noting and Protest, and the existing law is reproduced subject to a few verbal alterations. Section 104 of the Act has been transposed to the Chapter on Liability⁴, as a protest is obligatory in the case of a foreign bill when it is so required by the law of the place where it is drawn.

Sec. 105. 156. Since the enumeration of the purposes in section 105 may not be exhaustive, we have extended the principle⁵ to all the purposes of the Act and thus avoided the need for a separate provision like that in section 84(2).

1. S. 85, *ibid.*

2. Ss. 86-88, *ibid.*

3. S. 87(2), *ibid.*

4. S. 71 o App. I.

5. , *ibid.*

157. We have abolished the present distinction in section 106. Sec. 106.
106 based on the places of business and substituted two simpler rules¹—one relating to service of notice by post and the other relating to service otherwise than by post, say, by messenger. The latter mode will, of course, be permissible only when the two parties reside or carry on business at the same place. The provisions proposed by us will obviate all the controversy arising out of the expression 'next post'.

158. No change is proposed in section 107. Sec. 107.

159. No alteration has been considered necessary in sections 108—113, except that they have been transferred to the Part on Bills of Exchange and that sections 111 and 112 have been combined into one section². Secs. 108—113.

A new provision³ has been added, following section 65(5) of the English Act to make it clear that when a bill payable after sight is accepted for honour, its maturity shall be calculated from the date of the noting for non-acceptance, and not from the date of its acceptance for honour.

160. To section 114 we have added a new sub-section⁴ Sec. 114.
on the lines of section 68(6) of the English Act to explain the rights of the payer for honour which are not fully provided for in the existing section. On the other hand, we have made it clear that the payer for honour, according to the doctrine of subrogation, succeeds not only to the rights but also to the duties of the holder. We have also inserted a new provision⁵ corresponding to section 68(2) of the English Act to resolve the question of precedence where more than one person offers to pay a bill for the honour of different parties.

161. No change has been proposed in sections 115-116. Sec. 115—116

162. Some improvements have been made in section 117, Sec. 117
in the light of the corresponding English provision. As is evident from section 57(1) of the English Act, in case of dishonour, the holder, indorser and drawer are all entitled to

1. S. 99 *ibid.* of App. I.

2. S. 133 of App. I.

3. S. 137, *ibid.*

4. S. 136(1), *ibid.*

5. S. 135, *ibid.*

recover not only the amount due on the instrument but also the interest due thereon; but interest is not mentioned in the existing clause (a) of our section 117 which relates to the holder. The word 'indorsee' in the first paragraph of the section is a misprint for 'indorser'. We have removed these defects and also made it clear from which parties the holder, drawer or indorser shall be entitled to recover. Corresponding changes have been made in clause (c). We have added a new clause¹ to provide for the case of the drawer who has been compelled to pay the amount due on the instrument which is not mentioned in the section at all.

Clause (e) has been split up into two sub-sections for the purpose of a better understanding of the provision.

163. There is a difference in the provisions of clauses (b) and (d) of section 117 of the Act. Under clause (b), the rate of exchange in the case of a holder who pays the amount is to be determined at the current rate of exchange between the place where the person charged resides and the place at which the instrument was payable. Under clause (d), if the person charged and the indorser are at different places, the rate of exchange between the two places determines the quantum of liability. The place where the instrument is payable has no relevance under clause (d). On principle there should be no difference between the rights of a holder and of an indorser in this respect.

In our opinion, the problem arises not because of the residence of the parties being at different places but because of the fact that the currency in which the amount payable is expressed is other than that of the country where the amount is payable. We can simplify the problem by confining ourselves to cases where the amount is payable in India.

Now, the amounts payable are of two kinds—(a) the amount due upon the instrument; and (b) the expenses incurred on presenting, noting, protesting and the like.

1. S. 101(1) (b) of App. I.

(a) As regards the sum due on the instrument, no difficulty arises where the instrument specifies it in Indian currency. Where it is expressed in a foreign currency, the payment in India must obviously be made in Indian currency and here the question of rate of exchange comes in. We have provided¹ that in such a case the sum is to be paid in Indian currency at the current rate of exchange obtaining between India and the foreign country concerned on the date on which such sum became payable.

(b) The same principle should be followed as regards sums paid on account of protesting and the like in a foreign country except that the rate of exchange to be applied in this case should be that which was prevalent on the date on which such expenses were incurred by the holder or indorser, as the case may be. We have provided accordingly².

164. No change has been proposed in sections 118—120, ^{Secs. 118—120.} We have however inserted a new provision³ relating to the estoppel of the acceptor of a bill in the light of section 54(2)(a) of the English Act. At present, the primary rule as to the acceptor's estoppel is contained in the Evidence Act instead of in the Negotiable Instruments Act. Section 117 of the Evidence Act, 1872 provides—

“No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such a bill or to endorse it.....”

Explanation (1).—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.....”

When the Negotiable Instruments Act was enacted subsequently, it was presumably considered unnecessary to repeat the principle in that Act. But since the above rule of evidence is a special rule relating to negotiable instruments and Chapter XIII of the Negotiable Instruments Act contains

1. S. 101(d) (i) (ii) of App. I.

2. S. 101(e), *ibid.*

3. S. 104, *ibid.*

various rules of evidence relating to such instruments, purporting to be exhaustive, it would seem proper to transfer the above rule from the Evidence Act to the Negotiable Instruments Act.

The substance of the said provision in the Evidence Act is that the acceptor of a bill is prevented from denying the drawer's authority to draw the bill or to indorse it but he may deny that the bill was really drawn by the person by whom it purports to have been drawn. In other words, he may show that the drawer was a fictitious person or that the signature was not genuine. Section 54(2) of the English Act provides that the acceptor is precluded from denying to a holder in due course the existence of the drawer, the genuineness of the signature after acceptance would introduce to draw the bill. Thus, while under the English law the acceptor is prevented also from denying the genuineness of the signature of the drawer, under the Indian law it is otherwise. We are of the view however that at the time of acceptance, the drawer should satisfy himself whether the drawer's signature is genuine or not. To permit him to deny the genuineness of his signature and his capacity and authority uncertainty into the law and innocent parties would be made to suffer. The English principle being just and equitable, should be preferred to the provision in section 117 of the Evidence Act. सत्यमेव जयते

We have, accordingly, adopted a provision¹ on the lines of the English Act and recommended that the provision in the Evidence Act should be deleted in so far as it relates to the acceptor.

Secs. 121-
122.

165. No change has been proposed in sections 121-122, except that a clause has been added to section 122, on the lines of section 55(2)(c) of the English Act, to prevent the indorser from denying the validity of the instrument and his title to it at the time of the indorsement.

166. As stated earlier, all provisions exclusively relating to cheques have been put in a separate Part, and in that

Part we have included the following new provisions, in order to make it comprehensive:

- (i) When a banker's authority may be revoked is not stated in the Act. We have adopted the provision in section 75 of the English Act and amplified by adding notice of insolvency as a third ground¹.
- (ii) We have introduced a new provision² relating to cheques marked "account payee", for the reasons already explained³, and as a sequel to this new provision, it has become necessary to add another provision⁴ to protect a banker who, *bona fide* fails to carry out the "account payee" direction because of the obliteration or alteration of such crossing on the cheque.
- (iii) That crossing is also a material part of the cheque is not stated in the Act and is not included in the definition of material alteration. We have inserted an express provision⁵, following section 78 of the English Act.
- (iv) We have made it clear⁶ that a cheque does not amount to an assignment of part of the funds of the drawer in the bank to the payee, following section 53(1) of the Bills of Exchange Act (as applied to cheques by the second paragraph of section 73 of that Act).

167. Only a verbal change has been proposed in sections 123—127. But to section 125, we have added a new clause⁷, incorporating the rule contained in section 77(6) of the Bills of Exchange Act, to enable a collecting banker to specially cross a cheque to himself. Secs. 123—127.

1. S. 142 of App. I.

2. S. 144, *ibid.*

3. Para. 19, *ante.*

4. S. 153 of App. I.

5. S. 146, *ibid.*

6. S. 154, *ibid.*

7. S. 145(6), *ibid.*

Sec. 128. 168. In section 128, we have inserted the condition of good faith and absence of negligence, following the provisions of section 80 of the English Act.

Sec. 129. 169. Section 129 of our Act corresponds to section 79(2) of the English Act, but omits to specify the exceptions which are contained in the Proviso thereto. The exceptions are founded on a sound principle, namely, that there should be no liability where the crossing is not apparent or obliterated or altered in an unauthorised manner and the banker pays in good faith. We have, accordingly, adopted the Proviso.

Sec. 130. 170. No alteration is proposed in section 130.

Sec. 131. 171. In view of the recognition of "account payee" cheques, an exception relating thereto had to be made in section 131¹.

172. Our attention has been drawn to the recent legislation in England relating to cheques (Cheques Act, 1957—5 and 6 Eliz. 2, c. 36).

The main purpose of the Act seems to be to extend the legal protection to paying and collecting banks, acting in good faith, in respect of uncrossed cheques, banker's drafts and like instruments which, prior to this Act, was confined to crossed cheques, and practically to exonerate the paying banks from the duty of insisting on the endorsement of the payee (except where the cheque is negotiated), provided that payment is made *bona fide* and in the ordinary course of business.

The implications of these provisions have not yet been clearly appreciated even by the Banks in England as appears from an article in *The Law Times*, Vol. 224, at p. 207. The Banks in England have issued instructions to their branches to move cautiously in this behalf and they have not taken full advantage of the provisions of the Act.

The instructions issued by the Banks contain the following directions:

Cases in which endorsement will not be required are:—

- (a) where the cheques are paid into the account of the payee;
- (b) where they are paid in for the credit of a joint or partnership account.

Endorsement will still be necessary in the following cases:

- (i) cheques cashed or exchanged over the counter;
- (ii) negotiated cheques, that is, those tendered for the credit of an account other than that of the ostensible payee;
- (iii) cheques payable to joint payees, if tendered for the credit of an account to which all are not parties; and
- (iv) bills of exchange (other than cheques) and promissory notes.

Having regard to the conditions in India, it may be dangerous to enact legislation on the lines of the Cheques Act, 1957. As the learned writer in the *Law Times* points out, "nothing is said in the new Act about the *users* of cheques". It looks solely to the convenience and protection of the bankers and we are not sure what repercussions it may have upon the interests of the customers, in a country like India. Further, there appears to have been no demand that we in India should have a legislation on those lines.

We think it advisable that we should wait until the implications of the Cheques Act, 1957 are fully known, and until there is sufficient demand by the banks and the members of the public in India for such a legislation.

173. No change has been considered necessary in section **Sec. 131 A.**
131A.

**Secs. 132--
133.**

174. No change is proposed in sections 132-133, **except** that they have been included in the Part dealing with Bills of Exchange.

**Secs. 134—
136.**

175. The provisions relating to conflict of laws and foreign instruments in sections 134—136 have been replaced by a new section¹ framed in the light of the principles arrived at in paragraphs 27—33, *ante*.

Sec. 137.

176. In section 137, the words “or the State of Jammu and Kashmir” have already been omitted by the Jammu and Kashmir (Extension of Laws) Act (62 of 1956).

**Secs. 138-
139.**

177. Sections 138-139 have been omitted by the Notaries Act (LIII of 1952).

178. In order to give a concrete shape to our proposals, we have, in Appendix I, put them into the form of draft sections of the Act. The Appendix is not, however, to be treated as a draft Bill.

As in our previous Reports, we have omitted all illustrations from the text.

Appendix II contains two comparative Tables: Table A shows the sections in the existing Act with the corresponding sections in Appendix I; while Table B shows the sections in Appendix I with the corresponding sections of our Act as well as of the Bills of Exchange Act and the Negotiable Instruments Law, respectively.

Appendix III contains the suggestions made by us regarding other Acts.

1. *¶* 108, *ibid*.

Appendix IV gives a list of commercial bodies and associations who were addressed individually for their suggestions and Appendix V specifies such of them as gave their views in writing.

M. C. SETALVAD,
(Chairman).

M. C. CHAGLA,
K. N. WANCHOO,
P. SATYANARAYANA RAO,
N. C. SEN GUPTA,*
V. K. T. CHARI,*
D. NARASA RAJU,*
S. M. SIKRI,*
G. S. PATHAK,*
G. N. JOSHI,
N. A. PALKHIVALA.

K. SRINIVASAN,
DURGA DAS BASU,
Joint Secretaries.

NEW DELHI;

The 26th September, 1958.

*Being unable to come to Delhi to sign the Report, these Members have authorised chairman to sign the Report on their behalf.

APPENDIX I

Proposals as inserted in the body of the existing Act. (This is, however, not to be treated as a Draft Bill).

[Corresponding sections of the existing Act are noted in the margin, and additions to the provisions of the existing Act are shown in the text in italics, wherever possible.]

THE NEGOTIABLE INSTRUMENTS ACT, 19

PART I—GÉNÉRAL

CHAPTER I

PRELIMINARY

Sec. 1. Short
title, extent,
and com- 19
mencement.

(1) This Act may be called the Negotiable Instruments Act,

(2) It extends to the whole of India.

(3) *It shall come into force on the 1st day of*
19

Sec. 2. Saving. Nothing herein contained affects *the provisions of*
S. 1, section 31 of the Reserve Bank of India Act, 1934.
Para. 2, part.

Sec. 3. Operation of the Act on negotiable instruments. *Every negotiable instrument shall be governed by the provisions of this Act, and no usage or custom at variance with any such provision shall apply thereto.*
[New]

Sec. 4. Definitions.

In this Act, unless the context otherwise requires—

“Acceptor”.
[S. 7, para.
3].

(1) “*acceptor*” means the drawee of a bill *who* has signed his assent upon *it*, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf.;

- (2) *"acceptor for honour" means a person who, when a bill has been noted or protested for non-acceptance or for better security, accepts it supra protest for honour of the drawer or of any one of the indorsers.....;* "Acceptor for honour"
[S. 7, para 4].
- (3) *an "accommodation party" means a person who has signed an instrument as a maker, drawer, acceptor or indorser without receiving the value thereof and for the purpose of lending his name to some other person¹;* "Accommodation party"
[New]
- (4)the expressions "at sight" and "on presentment" mean on demand; and the expression "after sight" means, *in the case of a note*, after presentment for sight, and, *in the case of a bill*, after acceptance or noting for non-acceptance or protest for non-acceptance; "At sight"
"on presentment"
"after sight"
[S. 21].
- (5) *"banker" means a person carrying on the business of accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, and includes any post office savings bank;* "Banker".
[S. 3, amplified]
- (6) *"bearer" means a person who by negotiation comes into possession of an instrument payable to bearer²;* "Before"
[New]
- (7) (i) *"bill" means a bill of exchange;* "Bill"
[New]
- (ii) a "bill of exchange" is an instrument in writing containing an unconditional order, signed by the drawer, directing a certain person to pay *on demand or at a fixed or determinable future time³* a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument; "Bill of Exchange"
[S. 5, para 1].

1. See sec. 28(1), B. E. A.

2. See sec. 2, B. E. A.

3. See sec. 3(1), B. E. A.

"Cheque".
S. 6].

- (8) a "cheque" is a *bill* drawn on a specified banker and not expressed to be payable otherwise than on demand;

"Delivery"
[New]

- (9) "*delivery*" means *transfer of possession, actual or constructive, from one person to another*¹;

"Drawer"
need.
"drawee".
[S. 7, para.
1].

- (10) a *person making a bill or cheque* is called the "drawer" and the person thereby directed to pay is called the "drawee";

"Drawee in
case of
need".
[S. 7, para.
2].

- (11) when in the bill or in any indorsement thereon the name of any person is given, in addition to the drawee, to be resorted to in case of need, such person is called a "drawee in case of need";

"Holder".
[S. 8.]

- (12) "*holder*" means the *payee or indorsee of an instrument who is in possession of the instrument or the bearer thereof, but does not include a beneficial owner claiming through a benami-dar*";

[New.]

Explanation.—When an instrument is lost and not found again, or is destroyed, its holder at the time of such loss or destruction shall be deemed to continue to be its holder, notwithstanding such loss or destruction;

"Holder in
due course".
[S. 9.]

- (13) "holder in due course" means any person who, for consideration, *becomes* the possessor of *an instrument* if payable to bearer, or the payee or indorsee thereof if payable to order, before the amount mentioned in it *became overdue*³ and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title;

Explanation.—For the purposes of this clause, a defect is said to exist in the title of a person to an instrument when he is not entitled to receive the amount due thereon, by virtue of the provisions of section 28;

1. See sec. 2, B. E. A.

2. See sec. 2, B. E. A.

3. See sec. 29(1)(a) B. E. A.; sec. 52, N. I. L.

- (14) when the maker or drawer or holder of an instrument signs the same, otherwise than as such maker or drawer, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same and is called the "indorser"; and the person in whose favour the indorsement is made is called the "indorsee"; ^{"Indorsement", "indorser", and "indorsee". [S. 15.]}
- (15) an instrument drawn or made in India, and made payable in, or drawn upon any person resident in, India, is an inland instrument, and every instrument not so drawn, made or made payable is a foreign instrument; ^{"Inland instrument" and "Foreign instrument". [Ss. 11 & 12.]}
- (16) "instrument" means a negotiable instrument; ^{"Instrument" [New.]}
- (17) "instrument payable to bearer" means an instrument which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank; ^{"Instrument payable to bearer". [S. 13 (1), Expl. (ii)]}
- (18) "instrument payable to order" means an instrument which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable; ^{"Instrument payable to order". [S. 13 (1), Expl. (i)]}
- (19) "issue" means the first delivery of an instrument complete in form to a person who takes it as a holder¹; ^{"Issue". [New]}
- (20) "maker" means the executant of a promissory note; ^{"Maker" [New]}
- (21) "material alteration", in relation to an instrument, includes any alteration of the date, the sum payable, the time of payment or the place of payment, and, where an instrument has ^{"Material alteration". [New]}

1. See sec. 2, B. E. A.

been accepted generally, the addition of a place of payment without the acceptor's assent¹;

"Maturity".
[S. 22, para.
1.]

(22) . . . "maturity" of a *note* or *bill* is the date at which it falls due;

"Negotiable instrument".
[S. 13 (1)
main para.]

(23) . . . "negotiable instrument" means a promissory note, bill of exchange or cheque . . . ;

"Negotiation". [S.
14]

(24) *when an instrument* is transferred *in the manner provided by this Act* to any person so as to constitute that person the holder thereof, the instrument is said to be negotiated;

"Notary".
[New]

(25) "*notary*" means a person appointed as such under the *Notaries Act, 1952*²;

"Note".
[New]

(26) "*note*" means a promissory note;

"Payee".
[S. 7, para.
5]

(27) "*payee*" means the person named in the instrument, to whom or to whose order the money is by the instrument *undertaken or directed* to be paid;

"Payment in due course"
[S. 10]

(28) "payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned;

"Promissory Note".
[S. 4]

(29) a "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay *on demand or at a fixed or determinable future time*³ a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

1. See sec. 64(2), B. E. A.

2. The definition of 'notary' in the existing Act was deleted by the Notaries Act, 1952

3. See sec. 83(1) B. E. A.; S. 184 N. I. L. (U. S. A.)

(30) “representative” means—

“Representative”.
[New]

- (i) *in the case of a person who is dead, his legal representative;*
 - (ii) *in the case of a person who has been adjudicated an insolvent, the official assignee or official receiver in whom his property has vested;*
 - (iii) *in the case of a company in liquidation, the liquidator thereof;*
- and includes a duly authorised agent.*



CHAPTER II

FORM AND INTERPRETATION.

Sec. 5. Ap-
plicability of
the Contract
Act. [S. 26
para. 1, mo-
dified] *The provisions of the Indian Contract Act, 1872, shall, save in so far as they are inconsistent with the provisions of this Act, apply to all negotiable instruments.*

Sec. 6. In-
capacity of
minor. [S.
26, para.
modified.] *Where an instrument is made, drawn or negotiated by a minor, the making, drawing or negotiation entitles the holder to receive payment of the instrument and to enforce it against any other party thereto except the minor¹.*

Sec. 7. Cor-
poration's
power. [S. 26, para.
3.] *No corporation has power to make, draw, indorse or accept an instrument except in the manner and to the extent authorised by the law for the time being in force relating to corporations.*

Sec. 8. Ag-
ent's autho-
rity. [S. 27] *(1) Every person capable of binding himself or of being bound . . . by the making, drawing, acceptance or negotiation of an instrument may so bind himself or be bound by a duly authorised agent acting in the name of such person.*

(2) A general authority of an agent to transact business and to receive and discharge debts does not confer upon him the power of accepting or indorsing instruments so as to bind his principal.

(3) An authority to draw instruments does not of itself import an authority to indorse.

Sec. 9. Au-
thority of
partners. [New] *A partner acting in the firm name may, to the extent authorised by the law for the time being in force relating to partnership, bind the firm by the making, drawing, acceptance or negotiation of an instrument.*

1. See sec. 22(2), B. E. A.

(1) *An instrument* made, drawn, accepted indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction.....

Sec. 10. Instrument made without consideration. [S. 43, para. 1, earlier half]

(2) If any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or *any party to the instrument at the time of the transfer.*

[S. 43 para. 1 latter half].

When the consideration for which a person signed *an instrument* consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation *to the person so signing* is entitled to receive from him is *proportionately* reduced.

Sec. 11. Partial absence or failure of money consideration. [S. 44, para. 1].

Where a part of the consideration for which a person signed *an instrument*, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation *to the person so signing* is entitled to receive from him is *proportionately* reduced.

Sec. 12. Partial failure of consideration not consisting of money. [S. 45].

In an instrument—

(a) the sum payable may be "certain"....although it includes future interest or is payable at an indicated rate of exchange, or is *payable at the current rate of exchange*, and although *it is to be paid in stated instalments with a provision that upon default in payment of an instalment or interest, the whole shall become due;*

Sec. 13. "Certain sum" "unconditional" "certain person" and fictitious payee.

[S. 5, para. 3]

(b) *an undertaking* or order to pay may be "unconditional" although the time for payment of the amount or any instalment thereof is expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind. is certain to happen, although the time of its happening may be uncertain;

[S. 5, para. 2]

[New]

(c) *an order to pay out of a particular fund is not unconditional; but an unqualified order to pay, coupled with—*

(i) *an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount, or*

(ii) *a statement of the transaction which gives rise to the instrument, is unconditional¹;*

[S. 5 para. 4]

(d) *a person may be a 'certain person', . . . although he is misnamed or designated by description only, provided the person intended can reasonably be ascertained from the instrument²;*

[New]

(e) *where the payee is a fictitious or non-existing person, the instrument may be treated as payable to bearer³;*

An instrument is payable on demand—

Sec. 14. Instruments payable on demand.

[S. 21, earlier half]
[S. 19, part]

S. 19, part]
[S. 35, para 2, modified]

(a) *where it is expressed to be payable on demand, or at sight, or on presentment⁴; or*

(b) *where no time for payment is specified therein; or*

(c) *where the instrument is a cheque; or*

(d) *where the instrument is issued, accepted or indorsed after it is overdue, as regards the person so issuing, accepting or indorsing⁵.*

Sec. 15. When instrument payable on demand overdue.

[New]

An instrument payable on demand shall be deemed to be overdue when it appears on the face of it to have been in circulation for an unreasonable length of time⁶.

1. See sec. 3(3), B. E. A.

2. See sec. 7(1), B. E. A.

3. See sec. 7(3), B. E. A.

4. See sec. 10(1)(a), B. E. A.

5. See sec. 10(2), B. E. A.

6. See sec. 36(3), B. E. A.

The expression "after sight" means—

- (a) in a *note*, after presentment for sight, and
- (b) in a *bill*, after acceptance or noting for non-acceptance or protest for non-acceptance.

Sec. 16. "After sight".
[S. 21, latter half]

An instrument is payable at a determinable future time where it is expressed to be payable—

- (a) *at a fixed period after date or sight; or*
- (b) *on, or at a fixed period after, the occurrence of a specified event which is certain to happen though the time of happening may be uncertain¹.*

Sec. 17. Instrument payable at a determinable future time.
[New]

Where an instrument, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

Sec. 18. Effect of drawing or indorsing instrument payable to order. [S. 13(f) Expl. (iii)]

An instrument is not invalid for the reason only that it is ante-dated or post-dated, provided the ante-dating or post-dating was not done for an illegal or fraudulent purpose².

Sec. 19. Effect of ante-dating and post-dating.
[New]

(1) Where one person signs and delivers to another a paper stamped in accordance with the law relating to stamp duty chargeable on instruments and either wholly blank or having written thereon an incomplete instrument, in order that it may be converted or completed into an instrument, he thereby gives *prima facie* authority to the person who receives the paper to make or complete, as the case may be, upon it an instrument, for the amount if any specified therein, or, where no amount is specified, for any amount, not exceeding in either case the amount covered by the stamp.

Sec. 20. Inchoate instrument.
S. 20].

(2) The person so signing shall, subject to the provisions of sub-section (3), be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course, for the amount specified in the instrument or

1. See sec. 11, B. E. A.

2. See sec. 13(2), B. E. A. and sec. 12, N. I. L.

filled up therein:

Provided that no person other than a holder in due course shall receive from the person *so signing the paper* anything in excess of the amount intended by him to be paid thereunder.

(3) *In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time and strictly in accordance with the authority given;*

*Provided that if any such instrument after completion is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filed up within a reasonable time and strictly in accordance with the authority given*¹.

Sec. 21. Negotiable instrument when complete.

[S. 46, para. 1]
[S. 46, para. 2.]

(1) The making, acceptance or indorsement of an *instrument* is completed by delivery.

(2) As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument or by a person authorised by him in that behalf.

[S. 46, para. 3.]

(3) As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property thereon.

Sec. 22. Immediate parties.
[S. 44 Explan.]

For the purposes of this Act—

(a) the drawer of a *bill* stands in immediate relation to the acceptor;

(b) the maker of a *note*, or the drawer of a *bill* or cheque stands in immediate relation to the payee, and the indorser to his indorsee;

(c) other *persons who sign* may, by agreement, stand in immediate relation to a holder.

1. See Sec. 20B. E. A.

If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid:

Sec. 23. Difference in figures and words. [S. 18]

Provided that if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount¹.

Where an instrument may be construed either as a note or bill, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

Sec. 24. Ambiguous instruments. [S. 17]

An instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several, payees.

Sec. 25. Payees may be joint. [S. 13 (2)]

Where a person signs an instrument in a trade or assumed name, he is liable thereon to the same extent as if he had signed it in his own name².

Sec. 26. Signature in trade or assumed name. [New]

Subject to the provisions of this Act, where a signature on an instrument is forged or placed thereon without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under such signature, unless the party against whom it is sought to retain or enforce payment of the instrument is precluded from setting up the forgery or want of authority:

Sec. 27. Forged or unauthorised Signature. [New]

Provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery³.

When an instrument has been lost or has been obtained from any maker, drawer, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, neither the person who finds or so obtains the instrument nor any possessor or indorsee who claims through

Sec. 28. Defective title modified [S. 58, modified]

1. See sec. 17(1), N. I. L. (U. S. A.).

2. See sec. 23(1), B. E. A.

3. See sec. 24, B. E. A.

such person is entitled to receive the amount due thereon from such maker, *drawer*, acceptor or holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Sec. 29. Ma-
turity, how
determined.
[S. 22, para.
2]

The maturity of a note or bill not payable on demand is determined as follows:—

- (1) *Every such note or bill* is at maturity on the third day after the day on which it is expressed to be payable.
- [S. 2] (2) In calculating the date at which a *note or bill*, made payable a stated number of months after date or after sight or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a *bill* made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.
- [S. 24] (3) In calculating the date at which a *note or bill* made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.
- [S. 25] (4) When the day on which a *note or bill* is at maturity is a public holiday, the instrument shall be deemed to be due on the *next succeeding business day*.

Explanation: The expression “public holiday” includes Sundays and any other day declared by the Central Government, by notification in the Official Gazette, to be a public holiday.



CHAPTER III

NEGOTIATION

Sec. 30
Mode of
negotiation.
[S. 46, para
4 and S. 47,
main part]

An instrument is negotiable—

(a) by . . . delivery thereof, *if payable to bearer*;

[S. 46, para
5 and S. 48]

(b) by indorsement and delivery thereof, *if payable to order*.

Sec. 31. Per-
sons entit-
led to nego-
tiate.
[S. 51]

Every sole maker, drawer or *holder*, or all of several joint makers, drawers . . . or *holders*, of an *instrument* may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 39, indorse and negotiate the same.

Explanation: Nothing in this section enables a maker or drawer to indorse or negotiate an instrument unless he is in lawful possession or is holder thereof.

Sec. 32.
Requisites of
indorsement.
[S. 56]

(1) *Negotiation by indorsement must be of the entire instrument¹.*

(2) *An indorsement . . . which purports to transfer to the indorsee only a part of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, is not valid as a negotiation of the instrument¹; but where such amount has been paid in part, a note to that effect may be indorsed on the instrument, which may then be indorsed for the balance.*

Sec. 33.
Kinds of in-
dorsements.
[New]

An indorsement may be either in blank or in full, and may be restrictive or conditional or qualified.

Sec. 34. In-
dorsement
in blank and
in full.
[S. 16 (1),
part]

(1) *An indorsement in blank specifies no indorsee.*

1. See sec. 32(2), B. E. A.

(2) *An indorsement in full specifies the person to whom or to whose order the instrument is to be payable*¹.

The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee.

Sec. 35 Provisions for payee to apply to indorsee.
[S. 16(2)]

*When an instrument has been indorsed in blank, any holder . . . may, without signing his own name . . . convert the indorsement in blank into an indorsement in full by writing above the indorser's signature a direction to pay the amount to or to the order of himself or some other person; and the holder does not thereby incur the responsibility of an indorser*².

Sec. 36. Conversion of indorsement in blank into indorsement in full.
[S. 49]

Subject to the provisions hereinafter contained as to crossed cheques, *an instrument indorsed in blank is payable to the bearer thereof, even though originally payable to order.*

Sec. 37. Instruments indorsed blank.
[S. 54]

If an instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Sec. 38. Indorsement in blank followed by indorsement in full.
[S. 55]

(1) *An indorsement is restrictive which either—*

Sec. 39. Restrictive indorsement.

(a) *restricts or excludes the further negotiation of the instrument; or*

(b) *constitutes the indorsee the agent of the indorser*

[S. 50, latter half, modified]

Provided that the mere absence of words implying power to negotiate does not make the indorsement restrictive.

(2) *A restrictive indorsement confers upon the indorsee the right—*

(a) *to receive payment of the instrument;*

(b) *to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorises him to do so.*

¹. See sec. 34(1), (2), B. E. A.

². See sec. 34(4), B. E. A.

(3) *Where a restrictive indorsement authorises further transfer, all subsequent indorseees take the instrument with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement*¹.

Sec. 40. Con-
ditional in-
dorsement.
[S. 52, para
1, part]

(1) The indorser of *an instrument* may, by express words in the indorsement, make *his* liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

(2) *Such a condition is valid only as between the indorser and the indorsee.*

(3) *Where an instrument purports to be indorsed conditionally, the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not*².

Sec. 41. Qua-
lified in
dorsement
[S. 52, para.
1, part]
[S. 52, para.
2]

(1) The indorser of *an instrument* may, by express words in the indorsement, exclude his own liability thereon.

(2) Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Sec. 42.
Conditional
delivery.
[S. 47,
Exception]

An instrument delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for consideration without notice of the condition) unless such event happens.

Sec. 43.
Negotiation
by legal
representa-
tives. [S.57]

The legal representative of a deceased person cannot negotiate, by delivery only, *an instrument* payable to order and indorsed by the deceased but not delivered.

Sec. 44.
Negotiation
back before
maturity.
[New]

*Where an instrument is negotiated back before maturity to the maker or drawer or a prior indorser or to the acceptor, such party may, subject to the provisions of this Act, reissue and further negotiable the instrument*³.

1. See secs. 36 and 37, N. I. L. (U. S. A.) and S. 35, B. E. A.

2. See sec. 33, B. E. A. and sec. 39, N. I. L. (U. S. A.).

3. See sec. 37, B.E.A., part.

Subject to the provisions contained in this Chapter relating to restrictive, conditional and qualified indorsements, the person in whose favour an instrument is negotiated acquires the property therein with the right of further negotiation

S. 45.
Effect
negotiation
[S. 50,
earlier half
modified]

An instrument may be negotiated (except by the maker, drawer, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawer, drawee or acceptor at or after maturity, but not after such payment or satisfaction, or after it has been restrictively indorsed¹.

Sec. 46.
When negotiability
ceases.
[S. 60]

¹. See sec. 36(1)(a), B.E.A.



CHAPTER IV

RIGHTS OF HOLDER AND HOLDER IN DUE COURSE

Sec. 47.
Rights of
holder.
[New] *A holder may sue on the instrument in his own name, receive payment in due course thereunder and further negotiate it in the manner provided by this Act.*

Sec. 48.
Rights of
holder of an
instrument
negotiated
back to him.
[New] *A person acquiring an instrument in the circumstances mentioned in section 44 is not entitled to enforce payment of such instrument against any intervening party to whom he was previously liable¹.*

Sec. 49.
Instrument
acquired
after dis-
honour or
when over-
due.
[S. 59,
main para.] *A holder who has acquired an instrument after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor, and is subject to the equities to which the transferor was subject at the time of acquisition by such holder.*

Sec. 50.
Accom-
modation
note or
bill.
[S. 59,
Proviso] Any person who, in good faith and for consideration, becomes the holder, after maturity, of a *note or bill* made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Sec. 51.
Holder
claiming
through
holder in
due course.
[S. 53,
modified] (1) A holder who derives his title *through* a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights thereon of that holder in due course as regards the acceptor and all parties to the instrument prior to that holder².

(2) *Where the title of the holder is defective—*

[New] (a) *if he negotiates the instrument to a holder in due course, that holder obtains a good and complete title to the instrument; and*

¹. See sec. 37, B.E.A., part.

². See sec. 29(3), B.E.A.

- (b) if he obtains payment of the instrument, the person who pays him in due course gets a valid discharge for the instrument¹.

A holder in due course holds the instrument free from any defect of title of prior parties, and free from defences available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon².

(1) Where an instrument has been lost before it is overdue, the person who was the holder thereof may apply to the maker or drawer to give him another instrument of the same tenor, giving security to the maker or drawer, if required, to indemnify him against all persons whatever in case the instrument alleged to have been lost shall be found again.

(2) If the maker or drawer on request as aforesaid refuses to give such duplicate instrument, he may be compelled to do so.

1. See sec. 30(3), B.E.A.

2. See sec. 38(2), B.E.A.



CHAPTER V

LIABILITY OF PARTIES

Sec. 54. Scope of Chapter. [New] *The liability of the original parties to an instrument, and of persons who become parties thereto under supervening contracts, such as acceptors, indorsers and acceptors for honour, shall, subject to the other provisions of this Act, be as defined in this Chapter.*

Sec. 55. Stranger signing instrument presumed to be indorser. [New] *A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor, is presumed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity¹.*

Sec. 56. Liability of drawer or acceptor of a bill exchange. [S. 30, part, modified]. [New] (1) *The drawer of a bill, by drawing it, engages that or on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it².*

(2) *The drawee of a bill is not liable thereon until acceptance in the manner provided by this Act.*

[Sec. 32, part modified]. (3) The acceptor before maturity of a bill, by accepting it, engages that he will pay it according to the tenor of his acceptance and in default of such payment such acceptor is bound to compensate any party to the bill for any loss or damage sustained by him and caused by such default³.

[S. 41]. (4) *The acceptor of a bill already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.*

Sec 57. Liability of drawer or drawee of cheque. [S. 30, part] (1) *The drawer of a . . . cheque, by drawing it, engages that in case of dishonour by the drawee. he will compensate the holder⁴.*

1. See sec. 63, N.I.L. (U.S.A.) and sec. 56, B.E.A.

2. See sec. 55 (1), B.E.A.

3. See sec. 54(1), B.E.A.

4. See sec. 73, para. 2, read with sec. 55 (1), B.E.A.

(2) The drawee of a cheque having sufficient funds of [S. 31]. the drawer in his hands properly applicable to the payment of such cheque *shall* pay the cheque when duly required so to do, and, in default of such payment, *shall* compensate the drawer for any loss or damage caused by such default.

.... The maker of a note, by making it, engages that [Sec. 58. Liability of a maker of a promissory note.] he will pay it at maturity according to its apparent tenor and in default of such payment the maker is bound to compensate any party to the note for any [S. 32, part, modified]. loss or damage sustained by him and caused by such default¹.

.... The indorser of an instrument, by indorsing it, [Sec. 59. Liability of indorser of any instrument.] engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured, he will compensate the holder or subsequent indorser who is [S. 35, para. 1, part, modified]. compelled to pay it².

(1) The maker of a note, the drawer of a cheque, the [Sec. 60. Extent of Liability of parties.] drawer of a bill until acceptance and the acceptor, are respectively liable thereon as principal debtors [S. 37, part].

(2) ... The other parties to the instrument are liable thereon as sureties for the maker, drawer or acceptor, as the case may be. [S. 37, part].

(3) As between the parties so liable as sureties, each [S. 38, part]. prior party is also liable thereon as a principal debtor in respect of each subsequent party.

The provisions of sub-section (3) of section 56, section [Sec. Provision for contract to the contrary.] 58, section 59 or sub-section (1) or sub-section (3) of section 60 do not apply where there is a contract to the contrary. [S. 32 part, S. 35, para. 1 part, S. 37, part, S. 38, part].

When the holder of an accepted bill enters into any [Sec. 62. Liability of surety.] contract with the acceptor, which, under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged. [S. 39].

1. See sec. 88(1), B.E.A.

2. See sec. 55 (2), B.E.A.

Sec. 63.
Duration of
liability.
[S. 36].

The acceptor, and every prior party to an instrument, are liable thereon to a holder in due course until the instrument is duly satisfied.

Sec. 64,
Liability of
accom-
modation
party and
position of
accommo-
dated party.
[New]
[New]

(1) *An accommodation party is liable on an instrument to a holder in due course, notwithstanding that when such holder took the instrument he knew such party to be an accommodation party¹.*

(2) *An accommodation party to an instrument, if he has paid the amount thereof, is entitled to recover such amount from the party accommodated.*

[S. 43,
Exc. 1].

(3) *No party for whose accommodation an instrument has been made, drawn, accepted or indorsed can, if he has paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.*

Sec. 65
Liability of
a party
inducing
another to
make etc.
an instru-
ment.
[S. 43 Ex-
ception III].

No party to an instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

Sec. 66
Liability of
person sign-
ing as agent.
[S. 28, ear-
lier part,
modified].

(1) *An agent who signs an instrument is personally liable thereon unless he adds to his signature words indicating that he is acting for and on behalf of a named principal; but the mere addition by a person to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability².*

[S. 28, latter
part].

(2) *An agent is not personally liable to a person who induces him to sign upon the belief that the principal alone would be held liable.*

Sec. 67.
Liability of
legal re-
presentative.

A legal representative of a deceased person who signs an instrument is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

1. See sec. 28(2), B.E.A.

2. See sec. 26(1), B.E.A., and sec. 20 N.I.L. (U.S.A.).

(1) *Where the holder of an instrument payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery".*

Sec. 68.
Transfer or
by delivery
and trans-
feree.
[New]

(2) *A transferor by delivery is not liable on the instrument.*

(3) *A transferor by delivery who negotiates an instrument thereby warrants to his immediate transferee, being a holder for consideration, that the instrument is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless¹.*

(1) *Subject to the provisions of section 75, an instrument must, in order to make the parties thereto liable to the holder, be presented for payment in accordance with this Act.*

Sec. 69.
Presentment.
[S. 64 para.
1, part].

Exception.—...Presentment for payment is not necessary in order to charge the maker of a note payable on demand and not payable at a specified place, or the acceptor of a bill.

[S. 64,
Exc., mo-
dified].

(2) *The provisions of this section are without prejudice to the provisions relating to presentment for acceptance in the case of a bill.*

[New]

(1) *When an instrument is dishonoured by non-payment, notice must be given, in the manner provided by this Act, that the instrument has been so dishonoured*

Sec. 70.
Notice of
dishonour
for non-
payment
when obli-
gatory.
[S. 93,
para. 1,
part].
[Sec. 93,
para 2].

(2) *Such notice, however, need not be given to the maker of the dishonoured note the acceptor of the dishonoured bill or the drawee of the dishonoured cheque . .*

Foreign bills must be protested for dishonour in the manner provided in Chapter IX of this Part when such protest is required by the law of the place where they are drawn

Sec. 71.
Necessity
for noting
and protest.
[S. 104].

1. See sec. 58, B.E.A.

CHAPTER VI

PRESENTMENT FOR PAYMENT

Definition
Sec. 72.
[New] *In this Chapter, "presentment" means presentment for payment.*

Sec. 73
Rules
governing
present-
ment for
payment.
[New] (1) *An instrument required to be presented for payment must be presented in the manner hereinafter provided.*

[S. 64,
para. 1,
part.] (2) *Presentment must be made by the holder or by some person authorised to receive payment on his behalf.*

[S. 64,
para. 1,
part &
S. 75.] (3) *Presentment must be made, in the case of a note, to the maker, in the case of a bill to the acceptor and in the case of a cheque to the drawee, or to the representative of the maker, acceptor or drawee.*

Explanation.—Where there are several persons, not being partners, liable on the instrument, as makers, acceptors or drawees, as the case may be, and no place of payment is specified, presentment must be made to them all¹.

(4) *Presentment must be made at the proper time, as provided below:—*

[S. 66.] (i) *a note or bill not payable on demand must be presented at maturity;*

[S. 74.] (ii) *subject to the provisions of this Act, an instrument payable on demand must be presented within a reasonable time after it is received by the holder;*

[S. 67,
earlier
part]. (iii) *a note payable by instalments must be presented . . . on the third day after the date fixed for payment of each instalment;*

¹. See sec. 78 N. I. L. and sec. 45(6), B.E.A.

- (iv) subject to the provisions of section 155, a cheque [S. 72]. must, in order to charge the drawer, be presented . . . before the *relationship* between the drawer and his banker has been altered to the prejudice of the drawer;
 - (v) a cheque must, in order to charge any person [S. 73]. except the drawer, be presented within a reasonable time after delivery thereof by such person.
- (5) Presentment . . . must be made during the usual [S. 65]. hours of business, and, if at a banker's, within banking hours.
- (6) *Presentment must be made at the proper place as provided below:—*
- (i) *where a place of payment is specified in the instrument, it must be presented at that place;* [Ss. 68-69, modified]
 - (ii) *where no place of payment is specified, but the address of the maker, acceptor or drawee is given in the instrument, it must be presented at such address;* [New]
 - (iii) *where no place of payment is specified and no address given, the instrument must be presented at the place of business (if known) or the ordinary residence (if known), of the maker, acceptor or drawee;* [S. 70].
 - (iv) *in any other case, the presentment may be made to the maker, acceptor or drawee in person wherever he can be found¹.* [S. 71, part].

Explanation.—In this sub-section, “specified place” [New] means a place described with particulars sufficient to enable the person presenting the instrument to identify the place where the person sought to be charged with liability can be found.

1. See sec. 45(4), B.F.A.

[S. 75A,
part].

(7) Delay in presentment is excused if the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made within a reasonable time.

Sec. 74.
What constitutes valid presentment and the mode of presentment. [S. 64, para. 2 modified].

(1) *To constitute a valid presentment, it is not necessary to present the original instrument to the person liable to pay, but it shall be sufficient if a copy thereof, certified to be true by the holder, is delivered to such person, either personally or by registered post or by other effective means.*

[New]

(2) *If, after such delivery, the person liable to pay so demands, the original instrument shall be made available to him for inspection during the hours of business of the holder, and if the holder fails to do so within a reasonable time, the presentment shall be deemed to be invalid.*

Sec. 75.
When presentment unnecessary [S. 76].

No presentment . . . is necessary, and the instrument shall be deemed to be dishonoured at the due date for presentment, in any of the following cases:—

[Cl. (a),
para. 1].

(a) if the maker, *acceptor or drawee* intentionally prevents the presentment of the instrument; or

[Cl. (a),
para. 2].

(b) if, the instrument being payable at his place of business, he closes such place of business on a business day during the usual business hours; or

[Cl. (a),
para. 3].

(c) if, the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place *on a business day* during the usual business hours; or

[Cl. (a),
para. 4].

(d) if, the instrument not being payable at any specified place, he cannot after due search be found; or

[Cl. (b) 1.

(e) as against any part sought to be charged therewith, if he has engaged *in writing* to pay *without presentment*; or

- (f) as against any party if, after maturity, with [Cl. (c)] knowledge that the instrument has not been presented, he makes a part payment on account of the amount due on the instrument, or promises to pay the amount due thereon in whole or in part, or otherwise waives his right to take advantage of any default in presentment; or
- (g) as against the drawer, if the drawer could not [Cl. (d)], suffer damage from the want of such presentment; or
- (h) *where the drawee is a fictitious person*¹; or [New]
- (i) *as regards an indorser, where the instrument* [New] *was made, drawn or accepted for the accommodation of that indorser and he has no reason to expect that the instrument would be paid if presented*²; or
- (j) *where, after the exercise of reasonable diligence,* [New] *presentment as required by this Act cannot be effected*³; or
- (k) *where a bill has been dishonoured for non-* [New] *acceptance.*

Explanation.—*The fact that the holder has reason to* [New] *believe that the instrument will, on presentment, be dishonoured does not dispense with the necessity for presentment*⁴.

1. See sec. 46(2) (b), B.E.A.

2. See sec. 46(2) (d), B.E.A.

3. See sec. 46 (2) (a), para. 2, B.E.A.

4. See sec. 46(2) (a), para. 2, B.E.A.

CHAPTER VII

PAYMENT, DISCHARGED AND INTEREST

Sec. 76. (1) *An instrument is discharged by payment to the holder by or on behalf of the maker of a note, the drawer of a cheque, the drawer of a bill until acceptance or the acceptor.*
Discharge by payment.
[S. 78 modified].

[S. 82 (c) modified]. (2) *In the case of an instrument payable to bearer or . . indorsed in blank, payment in due course by the maker, drawer, acceptor or indorser discharges all the parties thereto.*

[New] (3) *In the case of an instrument made, drawn, accepted or indorsed for accommodation, payment in due course by the party accommodated discharges the instrument¹.*

[New] (4) *Payment to the holder by any other party discharges the liability of the party making the payment.*

[S. 89, part]. (5) *Where an instrument has been materially altered but does not appear to have been so altered, payment thereof by a person . . . liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person . . . from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered.*

Sec. 77. Any person liable to pay, and called upon by the holder . . . to pay, the amount due on *an instrument* is before payment entitled to have it shown, and is on payment entitled to have it delivered up to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.
Instrument to be delivered on payment.
[S. 81].

1. See sec. 59(3), B.E.A.

(1) The maker, *drawer*, acceptor or indorser respectively of an instrument is discharged from liability thereon—
Sec. 78. Other modes of discharge.

(a) to a holder thereof who cancels such acceptor's [S. 82(a)], or indorser's *signature* with intent to discharge him and to all parties claiming under such holder;

(b) to a holder thereof who otherwise discharges [S. 82(b)] such maker, *drawer*, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

(c) when the person liable thereon as principal debtor becomes the holder thereof at or after its maturity in his own right. [S. 90 modified].

(2) When the holder of an accepted bill enters into any contract with the acceptor of the nature referred to in section 62, the other parties are discharged, unless the holder has expressly reserved his right to charge them. [New].

(3) When the holder of an instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity. [S. 40].

(1) The drawer of a bill or cheque, and the indorser of a bill or note, are discharged where there is a default by the holder in presentment of the instrument for payment in accordance with this Act. Sec. 79 Discharge for non-presentment.. [S. 64, para. 1, part].

(2) The maker of a note payable on demand and at a specified place is discharged in default of presentment as aforesaid. [S. 64, para. 1, part, read with Exc.].

If the holder of a bill acquiesces in a qualified acceptance as defined in section 12....., all previous parties whose consent is not obtained to such acceptance are discharged as against the holder, unless on notice given by the holder they assent to such acceptance. Sec. 80. Discharge of parties not consenting to qualified or limited acceptance. [S. 86, main para, part].

Sec. 81.
Discharge
by material
alteration,
[S. 87 para.
1. modi-
fied.]

(1) *Where an instrument or the acceptance of a bill is materially altered without the assent of all the parties liable on it, the instrument or bill is discharged, except as against the party who has himself made, authorised or assented to the alteration and subsequent indorsers:*

Provided that this section shall not apply where the alteration was made by a stranger without the consent of or any negligence or fraud on the part of the holder, or where the alteration was made in order to carry out the common intention of the original parties¹.

[S. 87, para.
2].

(2) Any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration *for the indorsement*.

[S. 87, para.
3].

(3) The provisions of this section are subject to those of sections 20, 36, 80, 123 and 145.

[S. 88].

(4) An acceptor or indorser of *an instrument* is bound by his acceptance or indorsement notwithstanding any *previous* alteration of the instrument.

Sec. 82.
Interest
when rate
specified
and not
specified.

Subject to the provisions of any law for the time being in force relating to the relief of debtors, and without prejudice to the provisions of section 34 of the Code of Civil Procedure, 1908—

[S. 79, mo-
dified].

(a) when interest at a specified rate is expressly made payable on a *note or bill and no date is fixed from which interest is to be paid*, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the *note*, or, in the case of a *bill*, from the date on which the amount becomes payable, until tender or realisation of such amount, or until the date of the institution of a suit to recover such amount.;

- (b) *when a note or bill is silent as regards interest* [S. 80, para 1, modified]. *or does not specify the rate of interest, interest on the amount of the principal money due thereon shall, notwithstanding any collateral agreement relating to interest between any parties to the instrument, be allowed and calculated at the rate of six per centum per annum from the date of the note, or, in the case of a bill, from the date on which the amount becomes payable, until tender or realization of the amount due thereon, or until . . . the date of the institution of a suit to recover such amount.*



CHAPTER VIII

NOTICE OF DISHONOUR

Sec. 88.
Dishonour.
[New] *Dishonour takes place either by non-acceptance as provided in Part II or by non-payment as provided in this Chapter.*

Sec. 84.
Dishonour
by non-
payment.
[S. 92]. *An instrument is said to be dishonoured by non-payment—*

(a) when the maker (*in the case of a note*), the acceptor (*in the case of a bill*) or the drawee (*in the case of a cheque*) makes default in payment upon being duly required to pay the same; or

(b) when the instrument is deemed to be dishonoured under section 75.

Sec. 85.
Notice of
dishonour by
whom and
to whom
to be given.
[S. 93, para.
1, part]. *When an instrument is dishonoured by non-acceptance or non-payment, the holder or some party thereto who remains liable thereon. or a person authorised in this behalf by such holder or party, must give notice of dishonour—*

[S. 93, para.
1, part]. (a) to all . . . parties whom the holder seeks to make jointly and severally or severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon; or

[S. 94, para.
1, part]. (b) to the representative of the person to whom the notice is required to be given under clause (a).

Sec. 86.
Mode in
which notice
of disho-
nour should
be given.
[S. 94, para.
1, part]. *Notice of dishonour, in order to be valid and effectual, must conform to the following rules:—*

(a) it must be in writing and may be sent by post;

- (b) *it* may be in any form, but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured and in what way, and that he will be held liable thereon.

(1) A *notice of dishonour* must be given within a reasonable time after dishonour, at the place of business, or, (in case *the* party has no place of business), at the residence, of the party for whom it is intended.

Sec. 87.
Time and place of notice.
[S. 94, para. 1, part].

(2) When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

[S. 96].

If a *notice of dishonour* is duly directed and sent by post and *miscarried*, such miscarriage does not render the notice invalid.

Sec. 88.
Notice miscarried in post.
[S. 94, para 2].

Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided in *this Chapter*.

Sec. 89,
Party receiving must transmit notice of dishonour.
[S. 95].

When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

Sec. 90.
When party to whom notice given is dead.
[S. 97].

No notice of dishonour is necessary—

Sec. 91.
When notice of dishonour is unnecessary.
[S. 98].

- (a) when it is dispensed with by the party entitled thereto;
- (b) in order to charge the drawer, when he has countermanded payment;
- (c) when the party charged could not suffer damage for want of notice:

- (d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable, without any fault of his own, to give it.
- (e) to charge the drawer, when the acceptor is also a drawer;
- (f) when the party entitled to notice, knowing the facts, promises unconditionally to pay the **amount due on the instrument.**



CHAPTER IX

NOTING AND PROTEST

(1) When a *note or bill* has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a *notary* upon the instrument, or upon a paper attached thereto, or partly upon each.

Sec. 92
Noting.
[S. 99]

(2) Such note must be made within a reasonable time after dishonour, and must specify, the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

(1) When a *note or bill* has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a *notary*. Such certificate is called a protest.

Sec. 93.
Protest.
[S. 100,
para. 1]

(2) When the acceptor of a *bill* has become insolvent or his credit has been publicly impeached, before the maturity of the *bill*, the holder may, within a reasonable time, cause a *notary* to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

[S. 100,
para. 2]

A protest under section 93 must contain—

Sec. 94.
Contents
protest.
[S. 101]

- (a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;
- (b) the name of the person for whom and against whom the instrument has been protested;

- (c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the *notary*; the terms of his answer, if any, or a statement that he gave no answer or that he could not be found;
- (d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;
- (e) the subscription of the *notary* making the protest;
- (f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

Explanation.—A *notary* may make the demand mentioned in clause (c) of this section either in person or by his clerk, or, where authorised by agreement or usage, by registered letter.

Sec. 95.
Notice of
protest.
[S. 102]

When a *note* or *bill* is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the *notary* who makes the protest.

Sec. 96.
Protest for
non-pay-
ment after
dishonour
by non-
acceptance.
[S. 103]

All *bills* drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance may, without further presentment to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity.

Sec. 97.
When
noting equi-
valent to
protest.
[S. 104A]

For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

CHAPTER X

REASONABLE TIME

In determining what is a reasonable time *for the purposes of this Act* regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

Sec. 98.
Reasonable
time.
[S. 105]

(1) *A notice of dishonour, when sent by post, shall be deemed to be given within a reasonable time if it is posted on the day next after the day of dishonour.*

Sec. 99.
Reasonable
time for
giving
notice of
dishonour.
[S. 106,
para. 1.
modified]

(2) *If the holder and the party to whom a notice of dishonour is given carry on business or live in the same place, the notice, when sent otherwise than by post, shall be deemed to be given within a reasonable time if it is despatched in time so as to reach its destination on the day next after the day of dishonour.*

[S. 106,
para. 2
modified.]

A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

Sec. 100.
Reasonable
time for
transmitting
such notice.
[S. 107]

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CHAPTER XI

COMPENSATION

Sec. 101.
Rule as to
compensation.

(1) The compensation payable in case of dishonour of *an instrument* by any party liable to the holder, *drawer* or *any indorser* shall be determined by the following rules:—

[S.117(a)]

(a) the holder is entitled to *recover from any party liable on the instrument* the amount due upon the instrument (*principal and interest*), together with expenses properly incurred in presenting, noting and protesting it;

[New]

(b) *the drawer, who has been compelled to pay the amount due on a bill is entitled to recover from the acceptor the amount so paid (principal and interest), with interest at six per centum per annum from the date of payment until tender or realization thereof*;

[S.117(c).]

(c) an indorser who, being liable, has paid the amount due on the same is entitled to *recover from the acceptor or from the maker or drawer or from any prior indorser* the amount so paid (*principal and interest*), with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;

S. 117(b)
and (d),
modified.]

(d) *the sum mentioned in clause (a), (b) or (c) shall, in so far as it represents the amount due on the instrument (principal and interest), be paid to the holder, drawer or indorser, as the case may be, in the following manner:—*

(i) *where such sum is due to him in Indian currency, the payment shall be made in that currency;*

¹. Sec. 57 (1), B.E.A.

(ii) *where such sum is due to him in the currency of any foreign country, the payment shall be made in Indian currency at the current rate of exchange between India and that country as on the date on which such sum became payable to him;*

(e) *the expenses referred to in clause (a) or (c)* [New] *shall be paid to the holder or indorser, as the case may be, in Indian currency, or, where the expenses were incurred in the currency of any foreign country, then, in Indian currency at the current rate of exchange between India and that country as on the date on which they were incurred by the holder or indorser, as the case may be.*

(2) The party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof, if any. [S. 117 (e), earlier half.]

(3) If a bill drawn under sub-section (2) is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill. [S. 117(e), latter half.]

CHAPTER XII

SPECIAL RULES OF EVIDENCE

Sec. 102.
Presump-
tions as to
negotiable
instruments.

Until the contrary is proved, the following presumptions shall be made:—

[S. 118]

- (a) that every *instrument* was made or drawn for consideration, and that every *instrument*, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
- (b) that every *instrument*, *acceptance* or *indorsement* bearing a date was made or drawn on such date;
- (c) that every accepted *bill* was accepted within a reasonable time after its date and before its maturity;
- (d) that every transfer of *an instrument* was made before its maturity;
- (e) that the indorsements appearing upon *an instrument* were made in the order in which they appear thereupon;
- (f) that a lost *instrument* was duly stamped;
- (g) that the holder of *an instrument* is a holder in due course:

Provided that, where the instrument has been obtained from the lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker, *drawer* or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

In a suit upon an instrument which has been dishonoured, the court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

Sec. 103.
Presumption
on proof of
protest.
[S. 119]

*No acceptor of a bill shall, in a suit thereon by a holder in due course, be permitted to deny the existence of the drawer, his capacity and authority to draw the bill, and the genuineness of his signature*¹.

Sec. 104.
Estoppel
against
acceptor.
[New]

No maker or drawer, and no acceptor of a bill for the honour of the drawer, shall, in a suit on the instrument by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

Sec. 105.
Estoppel
against
denying
original
validity of
instru-
ment.
[S. 120]

No maker of a note and no acceptor of a bill payable to order shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

Sec. 106.
Estoppel
against
denying
capacity
of payee
to indorse.
[S. 121]

No indorser of an instrument shall, in a suit thereon by a subsequent holder, be permitted—

Sec. 107.
Estoppel
against
denying
signature
or capacity
of prior
party.
[S. 122].

- (a) to deny the signature or capacity to contract of any prior party to the instrument;
- (b) to deny that the instrument was at the time of his indorsement a valid and subsisting instrument and that he had then a good title thereto².

¹ See sec. 54 (2)(a), B.E.A.

² See sec. 55 (2)(c), B.E.A.

CHAPTER XIII

CONFLICT OF LAWS

Sec. 108.
Law govern-
ing liability
of maker,
acceptor
or indorser
of a foreign
instrument.

[S. 134,
part,
modified]

Where an instrument made or drawn in one country is negotiated, accepted or payable in another, the rights, duties and liabilities of the parties shall, in the absence of a contract to the contrary, be determined as follows¹—

- (a) *all questions relating to the capacity of the parties and the validity of the instrument or of its acceptance or negotiation, shall be governed by the law of the place where the contract constituted by the instrument, acceptance, or negotiation, as the case may be, was made¹:*

Provided that—

[S. 136]

- (i) *if an instrument is made, drawn, accepted or indorsed outside India but in accordance with the law of India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance made thereon within India;*

[New]

- (ii) *a foreign instrument shall not be invalid or inadmissible in evidence by reason only of its not being stamped according to the law of the place where it was made²;*

- (b) *the law of the place where such instrument is payable shall govern—*

[S. 134,
part,
modified]

- (i) *the liability of all parties to the instrument;*

¹ Sec. 72 (1), B.E.A.

² See sec. 72 (1), proviso (a), B.E.A.

- (ii) *the duties of the holder with respect to presentment for acceptance or payment;*
- (iii) *the date of maturity;* [New]
- (iv)what constitutes dishonour by non- [S. 135, part]
acceptance or by non-payment;
- (v) *the necessity for and sufficiency of a protest or* [S. 135, part]
notice of dishonour;
- (vi) *all questions relating to payment and satis-* [New]
faction, including the currency in which and
the rate of exchange at which the instrument
is to be paid.

The law of any foreign countryregarding nego- Sec. 109.
tiably instruments shall be presumed to be the same as that Presump-
of India unless and until the contrary is proved. tion as to
foreign
law.
[S. 137]



PART II

BILLS OF EXCHANGE

Sec. 110.
"Present-
ment".
[New]

In this Part, unless the context otherwise requires, "presentment" means presentment for acceptance.

Sec. 111.
Several
drawees.
[New]

A bill may be addressed to two or more drawees, whether they are partners or not; but an order addressed to two drawees in the alternative, or, subject to the provisions relating to drawee in case of need, to two or more drawees in succession, is not a bill¹.

Sec. 112.
In whose
favour a
bill may be
drawn.
[New]

A bill may be drawn payable to or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee².

Sec. 113.
Only drawee
can be
acceptor
except in
case of
need or for
honour.
[S. 33]

No person except the drawee of a bill, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Sec. 114.
Time for
deliberation
by drawee.
[S. 63]

(1) The holder of a bill must, if so required by the drawee to whom it is presented for acceptance, allow the drawee forty-eight hours (exclusive of public holidays) to consider whether he will accept it.

[S. 83]

(2) If such holder allows such drawee more time than specified in sub-section (1) all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

[Sec. 115.
Acceptance
by several
drawees
not
partners.
[S. 34]

Where there are several drawees of a bill who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

¹ See sec. 6 (2), B.E.A.

² See sec. 5 (1), B.E.A.

An acceptor of a bill drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Sec. 116.
Acceptance
of bill
drawn in
fictitious
name.
[S 42]

A bill, in order to fix the acceptor with liability, must be presented for acceptance before it is presented for payment.

Sec. 117.
When
presentment
for accep-
tance is
necessary.
[New]

The acceptance of an overdue bill is not void; but such acceptance does not preserve or revive the liability of a drawer or indorser who would be discharged by reason of non-presentment of the bill for acceptance before maturity.

Sec. 118.
Acceptance
of overdue
bill.
[New]

(1) *Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.*

Sec. 119.
Time for
presentment
for accep-
tance of a
bill payable
after sight.
[S. 61
para. 1,
part,
modified]

(2) *If he does not do so, the drawer and all indorsers prior to that holder are discharged¹.*

(1) *A bill is duly presented for acceptance when it is presented in accordance with the following rules²—*

Sec. 120.
Rules as to
presentment
for accep-
tance and
excuses for
non-present-
ment.

(a) *the presentment must be made by or on behalf of the holder to the drawee or to his representative, in business hours on a business day before the bill is overdue;*

[S. 61,
para. 1,
part,
modified
and S. 75
part]

(b) (i) *where a place of presentment for acceptance is specified in the bill, it must be presented at that place;*

[S. 61, para.
2, part]

¹ See sec. 40, B.E.A.

² See sec. 41 (1), B.E.A.

- [New] (ii) *where no such place of presentment is specified, but the address of the drawee is given in the bill, it must be presented at such address;*
- [New] (iii) *when no such place of presentment is specified and no address given, the bill must be presented at the place of business (if known) or ordinary residence (if known), of the drawee;*
- S. 71,
part] (iv) *in any other case, the presentment may be made to the drawee in person wherever he can be found;*
- [New] (c) *where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all unless one has authority to accept for all, in which case presentment may be made to him only¹.*
- [S. 75A,
part] (2) Delay in presentment is excused if the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made within a reasonable time.
- (3) *Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—*
- [New] (a) *where the drawee is dead or is insolvent or is a fictitious person or a person not having capacity to contract by bill²;*
- [S. 61,
para. 3,
part.
modified] (b) *where, at the due date for presentment, the drawee cannot, after reasonable search, be found at the place at which the bill is to be presented under sub-clause (i) or (ii) of clause (b) of sub-section (1);*
- [New] (c) *where the holder of a bill drawn payable elsewhere than at the place of business or residence of the drawee, has no time with the exercise of*

¹ See sec. 41(1)(b), B.E.A.

² See sec. 41 (2)(a), B.E.A.

reasonable diligence to present the bill for acceptance before presenting it for payment on the day it falls due¹;

(d) *where, after the exercise of reasonable diligence, [New] such presentment cannot be effected²;*

(e) *where although the presentment has been irre- [New] gular, acceptance has been refused on some other ground³.*

(4) *The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured, does not excuse presentment⁴.*

Where authorised by agreement or usage, presentment through the post office by means of a registered letter is sufficient.

Sec. 121.
Presentment by post.;
[S. 61, para. 4]

(1) A bill is dishonoured by non-acceptance—

Sec. 122.
Dishonour by non-acceptance and its consequences.

(a) *when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill;*

[S. 91, para. 1, part]

(b) *where presentment is excused and the bill is not accepted;*

[S. 91, para. 1, part]

(c) *where the drawee is incompetent to contract, or the acceptance is qualified.*

[S. 91, para. 2]

(2) *Subject to the provisions of this Act, when a bill is [New] dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary⁵.*

The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, may treat the bill as dishonoured by non-acceptance⁶.

Sec. 123.
Qualified acceptance.
[New]

¹ See sec. 39 (4), B.E.A.

² See sec. 41 (2)(b), B.E.A.

³ See sec. 41 (2) (c), B.E.A.

⁴ See sec. 41 (3), B.E.A.

⁵ See sec. 43 (2), B.E.A.

⁶ See sec. 44 (1), B.E.A.

[S. 86,
Expl.]

Explanation.—An acceptance is qualified—

- (a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;
- (b) where it undertakes the payment of part only of the sum ordered to be paid;
- (c) where, no place of payment being specified on the order, it undertakes the payment at a specified place and not otherwise or elsewhere, or where, the place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;
- (d) where it undertakes the payment at a time other than that at which under the *bill* it would be legally due;
- (e) where the drawees are not partners *and the acceptance* is not signed by all of them.

[S. 86,
main para.
part].

Sec. 124.
Non-present-
ment for
payment
in cases of
qualified
acceptance
when does
not dis-
charge the
acceptor.
[New]

Sec. 125.
Notice of
dishonour
for non-
acceptance.
[S. 93 para
1, part,
modified].

When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures¹.

(1) When a *bill* is dishonoured by non-acceptance the holder thereof, or some party thereto who remains liable thereon, must give notice of dishonour to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged²:

Provided that where a bill is dishonoured by non-acceptance and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by that omission².

¹ See sec. 52 (2), B.E.A.

² See sec. 48, B.E.A.

(2) *Where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment, unless the bill shall, in the meantime, have been accepted*¹.

When a bill accepted payable at a specified bank has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Sec. 126.
Liability
of banker
or negli-
gently
dealing
with bill
presented
for payme nt
[S. 77]

Subject to the foregoing provisions, the rules governing the mode of giving notice of dishonour for non-payment shall, mutatis mutandis, apply in respect of the mode of giving notice of dishonour for non-acceptance.

Sec. 127.
Mode of
giving
notice of
dishonour.
[New]

Where a drawee in case of need is named in a bill, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Sec. 128.
Drawee
in case of
need.
[S. 115]

A drawee in case of need may accept and pay the bill without previous protest.

Sec. 129
Acceptance
and
payment
without
protest.
[S. 116]

When a bill has been noted or protested for non-acceptance or for better security, any person, not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

Sec. 130.
Acceptance
or honour.
[S. 108].

A person desiring to accept for honour must, by writing on the bill under his hand, declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour.

Sec. 131.
How acce-
ptance for
honour
must be
made.
[S. 109]

Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

Sec. 132.
Acceptance
not speci-
fying for
whose
honour it
is made
[S. 110]

¹ See sec. 48, B.E.A.

Sec. 133.
Liability of
acceptor
for honour.
[S. 111,
para. 1]

An acceptor for honour binds himself, to all parties subsequent to the party for whose honour he accepts, to pay the amount of the bill if the drawee *does* not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all the loss or damage sustained by him in consequence of such acceptance:

Provided that—

[S. 111,
para. 2]

(a) an acceptor for honour is not liable to the holder of the bill unless it is presented, or, (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable), forwarded for presentment, not later than the day next after the day of its maturity;

[S. 112]

(b) an acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

Sec. 134.
Payment
for honour.
[S. 113]

When a *bill* has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying (or his agent in that behalf) has previously declared before a *notary* the party for whose honour he pays and that such declaration has been recorded by such *notary*.

Sec. 135.
Two or
more persons
offering to
pay for
honour.
[New]

Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference¹.

Sec. 136.
Rights and
duties of
payer for
honour.
[New]

(1) *Any person paying for honour, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour, is entitled to receive both the bill itself and the protest. If the holder does not on demand deliver them up, he shall be liable to the payer for 'honour in damages².*

¹ See sec. 68 (2), B.E.A.

² See sec. 68 (6), B.E.A.

(2) *Such person . . . is also entitled to all the rights . . . [S. 114.] and is subject to all the duties¹ of the holder at the time of such payment, in relation to the party for whose honour he pays and all parties liable to that party¹, and may recover from all such parties all sums so paid by him with interest thereon and with all expenses properly incurred in making such payment.*

Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of acceptance for honour².

Sec. 137.
Calculation
of maturity
in case of a
bill accepted
for honour.
[New]

Bills may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Sec. 138.
Set of
Bills.
[S. 132]

Execption: When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

Sec. 139.
Holder of
first
acquired
part entitled
to all.
[S. 133]

¹ See sec. 68 (5), B.E.A.

² See sec. 65 (5), B.E.A.

PART III

PROMISSORY NOTES

Sec. 140.
Present-
ment of
promissory
note for
sight.
[S.62]

A promissory note, payable at a certain period after sight, must be presented to the maker thereof *or his representative* (if he can after reasonable search be found) *for sight* by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.



PART IV

CHEQUES

(1) Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

Sec. 141.
Cheque payable to order or bearer.
[S. 85(1)]

(2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any indorsement whether in full or in blank appearing thereon, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation.

[S. 85(2)]

The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

Sec. 142.
Revocation of banker's authority.
[New]

- (1) *countermand of payment;*
- (2) *notice of the customer's death;*
- (3) *notice of adjudication of the customer as an insolvent¹.*

(1) Where a cheque bears across its face an addition of—

Sec. 143.
General and special crossing defined.
[S. 123]

- (a) the words "and company" or any abbreviation thereof, between two parallel transverse lines, *either with or without the words "not negotiable",* or

(b) . . two parallel transverse lines simply, *either with or without the words "not negotiable",* that addition *constitutes* a crossing, and the cheque is crossed generally².

1. See sec. 75, B.E.A.
2. See sec. 76 (1), B.E.A.

[S. 124]

(2) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition *constitutes* a crossing, and the cheque is crossed specially and . . . to that banker¹.

Sec. 144.
Cheque
crossed
"account
payee".
[New]

(1) *Where a cheque crossed generally bears across its face an addition of the words "account payee" between the two parallel transverse lines constituting the general crossing, the cheque, besides being crossed generally, is said to be crossed "account payee"*.

(2) *When a cheque is crossed "account payee"—*

(a) *it shall cease to be negotiable; and*

(b) *it shall be the duty of the banker collecting payment of the cheque to credit the proceeds thereof only to the account of the payee named in the cheque.*

Sec. 145.
Crossing
by drawer
or after
issue.
[New]

(1) *A cheque may be crossed generally or specially by the drawer².*

[S. 125, para. 1]

(2) Where a cheque is uncrossed, the holder may cross it generally or specially.

[S. 125, para. 2]

(3) Where a cheque is crossed generally, the holder may cross it specially.

[S. 125, para. 3]

(4) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable".

[S. 125, para. 4]

(5) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

[New]

(6) *Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself³*

Sec. 146.
Crossing
a material
part of a
cheque.
[New]

A crossing authorised by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate, or, except as authorised by this Act, to add to or alter, the crossing⁴.

1. See sec. 76 (2), B.E.A.

2. See sec. 77 (1), B.E.A.

3. See sec. 77 (6), B.E.A.

4. See sec. 73, B.E.A.

(1) Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Sec. 147.
Payment of
a cheque
crossed
generally
or specially.
[S. 126]

(2) Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent, being a banker, for collection.

Where a cheque is crossed specially to more than one banker, except when crossed to an agent for collection, *being a banker*¹, the banker on whom it is drawn shall refuse payment thereof.

Sec. 148.
Duties of
banker as
to crossed
cheques.
[S. 127]

Where the banker on whom a cheque is drawn which is crossed generally, pays the same otherwise than to a banker, or pays a cheque crossed specially otherwise than to the banker to whom it is so crossed, or his agent for collection, being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid:

Sec. 149.
Liability
of a banker
paying
crossed
cheques
otherwise
than to a
banker.
[S. 129,
modified]

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned, by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection, being a banker, as the case may be².

1. See sec. 79 (1), B.E.A.

2. Cf. sec. 79 (2) proviso, B.E.A.

Sec. 150
Protection
to banker
and drawer
where
cheque is
crossed.
[S. 128.
modified]

Where the banker, on whom a crossed cheque is drawn, *in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection, being a banker¹, the banker paying the cheque, and, if the cheque has come to the hands of the payee, the drawer thereof, shall respectively be entitled to the same rights and be placed in the same position in all respects as if payment of the cheque had been made to the true owner thereof.*

Sec. 151.
Cheque
bearing
words "not
negotiable".
[S. 130]

Where a person takes a cheque crossed generally or specially, bearing in either case the words "not negotiable", he shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

Sec. 152.
Protection
to collecting
banker.
[S. 131]

Subject to the provisions of this Act relating to cheques crossed "account payee", where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has to title or a defective title thereto², the banker shall not ... incur any liability to the true owner of the cheque by reason only of having received such payment.

Explanation:

A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

Sec. 153.
Protection
to banker
crediting
cheque
crossed
"account
payee".
[New]

Where a cheque is delivered for collection to a banker which does not at the time of such delivery appear to be crossed "account payee" or to have had a crossing "account payee" which has been obliterated or altered, the banker, in good faith and without negligence collecting payment of the cheque and crediting the proceeds thereof to a customer, shall not incur any liability by reason of the cheque having been crossed "account payee", or of

1. See sec. 80, B.E.A

2. See sec. 82 B.E.A.

such crossing having been obliterated or altered, and of the proceeds of the cheque having been credited to a person who is not the payee thereof.

A cheque, of itself, does not operate as an assignment of any part of the funds to the credit of the drawer with the banker¹.

Sec. 154.
Cheque not operating as assignment of funds.
[New]

(1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid.

Sec. 155.
When cheque not duly presented and drawer damaged thereby.
[S. 84(1)]

... ..

(2) The holder of a cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

[S. 84(3)]

Where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be indorsed by or on behalf of the payee, the bank is discharged by payment in due course.

Sec. 156.
Drafts.
[S. 85A]

The provisions of this Chapter shall apply to any draft, as defined in section 156, as if the draft were a cheque.

Sec. 157.
Application of this chapter to drafts.
[S. 131A]

1. Cf. S. 53(1), read with para. 2 of S.73, B.E.A.

MISCELLANEOUS

*The Negotiable Instruments Act, 1881, is hereby re-
pealed.*



APPENDIX II

TABLE A

Showing the provisions in the existing Act and the corresponding provisions, if any, in Appendix I.

Existing provision	Corresponding provision, if any in Appendix
1	2
Section 1	Sections 1 and 2
Section 2 (Repealed)	
Section 3	Section 4 (5)
Section 4	Section 4 (29)
Section 5, para. 1	Section 4 (7) (ii)
Section para. 2	Section 13 (b)
Section para. 3	Section 13 (a)
Section para. 4	Section 13 (d)
Section 6	Section 4 (8)
Section 7, para. 1	Section 4 (10)
Section para. 2	Section 4 (11)
Section para. 3	Section 4 (1)
Section para. 4	Section 4 (2)
Section para. 5	Section 4 (27)
Section 8	Section 4 (12)
Section 9	Section 4 (13)
Section 10	Section 4 (28)
Section 11	Section 4 (15)
Section 12	Section 4 (23)
Section 13(1), main para.	Section
Expln. (i)	Section 4 (18)
Expln. (ii)	Section 4 (17)
Expln. (iii)	Section 18
Section 13 (2)	Section 2 5
Section 14	Section 4(24)
Section 15	Section 4 (14), part
Section 16 (1), part	Section 34
Section 16 (1) „	Section 4 (14), part
Section 16 (2)	Section 35
Section 17	Section 24
Section 18	Section 23
Section 19, part	Section 14 (b)
Section 19, part	Section 14 (c)
Section 20	Section 20
Section 21, earlier half	Section 16 & s. 4 (4), part
Section 21, latter half	Section 14 & s. 4 (4), part
Section 22, para. 1	Section 4 (22)
Section 22, para. 2	Section 29 (1)
Section 23	Section 29 (2)
Section 24	Section 29 (3)
Section 25	Section 29 (4)
Section 26, para. 1	Section 5
Section 26, para. 2	Section 6
Section 26, para. 3	Section 7
Section 27	Section 8

Section 28, earlier part
 Section 28, latter part
 Section 29
 Section 30, part
 Section 30, part
 Section 31
 Section 32, part
 Section 32, part
 Section 32, part
 Section 33
 Section 34
 Section 35, para. 1, part
 Section 35, para. 1, part
 Section 35, para. 2
 Section 36
 Section 37, part
 Section 37, part
 Section 38, part
 Section 38, part
 Section 39
 Section 40
 Section 41
 Section 42
 Section 43, para. 1, earlier half
 Section 43, para. 1 latter half
 Section Exc. I
 Section Exc. II
 Section 44, para. 1
 Section 44, Explan.
 Section 45
 Section 45A
 Section 46, para. 1
 Section 46, para. 2
 Section 46, para. 3
 Section 46, para. 4
 Section 46, para. 5
 Section 47, main part
 Section 47, Exc.
 Section 48
 Section 49
 Section 50, earlier half
 Section 50, latter half
 Section 51
 Section 52, para. 1 part
 Section 52, para. 1
 Section 52, para. 2
 Section 53
 Section 54
 Section 55
 Section 56
 Section 57
 Section 58
 Section 59, main para.
 Section 59, proviso
 Section 60
 Section 61, para. 1, part
 Section 61, para. 1 part
 Section 61, para. 2
 Section 61, para. 3, part
 Section 61, para. 3 part
 Section 61, para. 4
 Section 62

Section 66 (1)
 Section 66 (2)
 Section 67
 Section 56 (1)
 Section 57 (1)
 Section 57 (2)
 Section 56 (3)
 Section 58
 Section 61, part
 Section 113
 Section 115
 Section 59
 Section 61, part
 Section 14 (d)
 Section 63
 Section 60 (1) & (2)
 Section 61, part
 Section 60 (3)
 Section 61, part
 Section 62
 Section 78 (3)
 Section 56 (4)
 Section 116
 Section 10 (a)
 Section 10 (b)
 Section 64 (3)
 Section 65
 Section 11
 Section 22
 Section 12
 Section 53
 Section 21 (1)
 Section 21 (2)
 Section 21 (3)
 Section 30 (a), part
 Section 30 (b), part
 Section 30(a), part
 Section 42
 Section 30 (b), part
 Section 36
 Section 45
 Section 39
 Section 31
 Section 40
 Section 41 (1)
 Section 41 (2)
 Section 51 (1)
 Section 37
 Section 38
 Section 32
 Section 43
 Section 28
 Section 49
 Section 50
 Section 46
 Section 119
 Section 120 (1) (a), part
 Omitted [see sec. 120 (3) (d)]
 Section 120 (1) (b) (i)
 Section 120 (3)(b)
 Section 121
 Section 140

Section 63
 Section 64, para. 1 part
 Section 64, para. 1 part
 Section 64, para. 1, part
 Section 64, para. 1
 Section 64, para. 1 part
 Section 64, para. 2
 Section 64, Exception
 Section 65
 Section 66
 Section 67, earlier part
 Section 67 latter part
 Section 68
 Section 69
 Section 70
 Section 71, part
 Section 71, part
 Section 72
 Section 73
 Section 74
 Section 75, part
 Section 75, part
 Section 75, part
 Section 75A, part
 Section 75A, part
 Section 76 (a), para. 1
 Section 76 (a), para. 2
 Section 76 (a), para. 3
 Section 76 (a), para. 4
 Section 76 (b)
 Section 76 (c)
 Section 76 (d)
 Section 77
 Section 78
 Section 79
 Section 80, para. 1
 Section 80, Expln.
 Section 81
 Section 82 (a)
 Section 82 (b)
 Section 82 (c)
 Section 83
 Section 84 (1)
 Section 84 (2)
 Section 84 (3)
 Section 85 (1)
 Section 85 (2)
 Section 85A
 Section 86, main para.—part
 Section main para. part
 Section Expln.
 Section 87, para. 1
 Section para. 2
 Section para. 3
 Section 88
 Section 89, part
 Section Part
 Section 90
 Section 91, para. 1, part
 Section 91, para. 1, part
 Section, 91, para. 2
 Section 92

Section 114 (1)
 Section 79 (2)
 Section 69 (1), main para.
 Section 79 (1)
 Section 73 (2)
 Section 73 (3), part
 Section 74 (1)
 Section 69 (1), Exception
 Section 73 (5)
 Section 73 (4) (i)
 Section 73 (4) (iii)
 Omitted
 Section 73 (6) (i), part
 Section 73 (6) (i), part
 Section 73 (6) (iii)
 Section 73 (6) (iv), main para.
 Section 120 (1) (b) (iv)
 Section 73 (4) (iv)
 Section 73 (4) (v)
 Section 73 (4) (ii)
 Section 73 (3), part
 Section 120 (1) (a), part
 Section 120 (1) (a), part
 Section 73 (7)
 Section 120 (2)
 Section 75 (a)
 Section 75 (b)
 Section 75 (c)
 Section 75 (d)
 Section 75 (e)
 Section 75 (f)
 Section 75 (g)
 Section 126
 Section 76 (1)
 Section 82 (a)
 Section 82 (b)
 Omitted
 Section 77
 Section 78 (1) (a)
 Section 78 (1) (b)
 Section 76 (2)
 Section 114 (2)
 Section 155 (1)
 Omitted
 Section 155 (2)
 Section 141 (1)
 Section 141 (2)
 Section 156
 Section 80
 Section 123, Expl. (e)
 Section 123, Expl. (a) to (d)
 Section 81 (1)
 Section 81 (2)
 Section 81 (3)
 Section 81 (4)
 Section 76 (5)
 Section 149, proviso
 Section 78 (1) (c)
 Section 122 (1) (a)
 Section 122 (1) (b)
 Section 122 (1) (c)
 Section 84



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Section 93, para. 1, part
 Section para. 1, part
 Section para. 1, part
 Section para 1, part
 Section 93, para. 2
 Section 94, para. 1, part
 Section para. 1, part
 Section para. 1, part
 Section para 2.
 Section 95
 Section 96
 Section 97
 Section 98
 Section 99
 Section 100, para. 1
 Section 100, para. 2
 Section 101
 Section 102
 Section 103
 Section 104
 Section 104A
 Section 105
 Section 106, para. 1
 Section 106, para. 2
 Section 107
 Section 108
 Section 109
 Section 110
 Section 111, para. 1
 Section para, 2
 Section 112
 Section 113
 Section 114
 Section 115
 Section 116
 Section 117 (a)
 Section 117 (b)
 Section 117 (c)
 Section 117 (d)
 Section 117 (e), earlier half
 Section 117 (e), latter half
 Section 118
 Section 119
 Section 120
 Section 121
 Section 122
 Section 123
 Section 124
 Section 125, para. 1
 Section para. 2
 Section para. 3
 Section para. 4
 Section 126
 Section 127
 Section 128
 Section 129
 Section 130
 Section 131
 Section 131A
 Section 132
 Section 133
 Section 134, part

Section 70 (1), 125 (1)
 Section 85, opening lines
 Section 125 (1)
 Section 85 (a)
 Section 70 (2)
 Section 85 (b)
 Section 86
 Section 87 (1)
 Section 88
 Section 89
 Section 87 (2)
 Section 90
 Section 91
 Section 92
 Section 93 (1)
 Section 93 (2)
 Section 94
 Section 95
 Section 96
 Section 71
 Section 97
 Section 98
 Section 99 (1)
 Section 99 (2)
 Section 100
 Section 130
 Section 131
 Section 132
 Section 133, main para.
 Section 133, proviso (a)
 Section 133, proviso (b)
 Section 134
 Section 136 (2)
 Section 128
 Section 129
 Section 101 (1) (a)
 Section 101 (1) (d), part
 Section 101 (1) (c)
 Section 101 (1) (d), part
 Section 101 (2)
 Section 101 (3)
 Section 102
 Section 103
 Section 105
 Section 106
 Section 107
 Section 143 (1)
 Section 143 (2)
 Section 145 (2)
 Section 145 (3)
 Section 145 (4)
 Section 145 (5)
 Section 147
 Section 148
 Section 150
 Section 149, main para.
 Section 151
 Section 152
 Section 157
 Section 138
 Section 139
 Section 108 (a), main para.



1	2
Section 134, part	Section 108 (b) (i)
Section 135, part	Section 108 (b) (iv)
Section part	Section 108 (b) (v)
Section 136	Section 108 (a) proviso (i)
Section 137	Section 109
Section 138 (repealed)	..
Section 139 (repealed)	..



APPENDIX B

TABLE B

Showing the provisions in Appendix 1 to the proposals and the corresponding provisions, if any, in the existing Act, the Bills of Exchange Act, 1882, and the Uniform Negotiable Instruments Law.

Appendix I	Existing Act	B. E. Act	N.I.L.
1	2	3	4
S. 1			
S. 2	S. 1, para. 2, part	..	..
S. 3	New	..	..
S. 4 (1)	S. 7, para. 3	S. 17 (1)	S. 132
S. 4 (2)	S. 7, para. 4	S. 65 (1)	S. 161
S. 4 (3)	New	S. 28 (1)	S. 29
S. 4 (4)	S. 21	S. 10 (1) (a)	S. 7 (1)
S. 4 (5)	S. 3	S. 2	S. 191, part
S. 4 (6)	New	S. 2	S. 191, part
S. 4 (7) (i)	New	S. 2	S. 191, part
S. 4 (7) (ii)	S. 5, para. 1	S. 3 (1)	S. 126
S. 4 (8)	S. 6	S. 73	S. 185
S. 4 (9)	New	S. 2	S. 191, part
S. 4 (10)	S. 7, para. 1	..	..
S. 4 (11)	S. 7, para. 2	S. 15	S. 131
S. 4 (12)	S. 8	S. 2	S. 191, part
S. 4 (13)	S. 9	S. 29	S. 52
S. 4 (14)	S. 15 and S. 16 (1), part	S. 32 (1)	S. 31
S. 4 (15)	S. 11 & 12	S. 4 (1)	S. 129
S. 4 (16)	New	..	..
S. 4 (17)	S. 13 (1), Expln. (ii)	S. 8 (3)	S. 9
S. 4 (18)	S. 13 (1), Expln. (i)	S. 8 (4)	S. 8
S. 4 (19)	New	S. 2	S. 191
S. 4 (20)	New	..	..
S. 4 (21)	New	S. 64 (2)	S. 125
S. 4 (22)	S. 22, para. 1	..	..
S. 4 (23)	S. 13 (1) main para.	..	..
S. 4 (24)	S. 14	S. 31 (1)	S. 30
S. 4 (25)	New	..	..
S. 4 (26)	New	..	..
S. 4 (27)	S. 7, para. 5	..	..
S. 4 (28)	S. 10	S. 59 (1), para. 2	S. 88
S. 4 (29)	S. 4	S. 83 (1)	S. 194
S. 4 (30)	New	..	..
S. 5	S. 26, para. 1	S. 22 (1), para.	..
S. 6	S. 26, para. 2	S. 22 (2)	S. 22, part
S. 7	S. 26, para. 3	S. 22 (1), proviso	S. 22, part
S. 8	S. 27	..	S. 19.
S. 9	New	S. 23 (2)	..
S. 10 (1)	S. 43, para. 1 earlier half	..	S. 28.
S. 10 (2)	S. 43, para. 1 latter half	..	..

1	2	3	4
S. 11	S. 44, para. 1	..	..
S. 12	S. 45	..	..
S. 13 (a)	S. 5, para. 3	S. 9 (1)	S. 2
S. 13 (b)	S. 5, para. 2	..	..
S. 13 (c)	<i>New</i>	S. 3 (3)	S. 3
S. 13 (d)	S. 5, para. 4	S. 7 (1)	S. 8
S. 13 (e)	<i>New</i>	S. 7 (3)	S. 9 (3)
S. 14 (a)	S. 21, earlier half	S. 10 (1) (a)	S. 7 (1)
S. 14 (b)	S. 19, part	S. 10 (1) (b)	S. 7 (2)
S. 14 (c)	S. 19, part	..	..
S. 14 (d)	S. 35, para. 2	S. 10 (2)	S. 7, last para.
S. 15	<i>New</i>	S. 36 (3)	..
S. 16	S. 21, latter half	S. 10 (1) (a)	S. 7 (1)
S. 17	<i>New</i>	S. 11	S. 4
S. 18	S. 13 (1) expln. (iii)	S. 8 (5)	..
S. 19	<i>New</i>	S. 13 (2)	S. 12
S. 20	S. 20	S. 20	S. 14
S. 21 (1)	S. 46 para. 1	S. 21 (1)	S. 16, part
S. 21 (2)	S. 46, para. 2	S. 21 (2) (a)	S. 16, part
S. 21 (3)	S. 46, para. 3	S. 21 (2) (b)	S. 16, part
S. 22	S. 44, Expln.	..	..
S. 23	S. 18	S. 9 (2)	S. 17 (1)
S. 24	S. 17	S. 5 (2)	S. 17 (5) and S. 130
S. 25	S. 13(2)	S. 7 (2)	S. 8 (4) and 8(5)
S. 26	<i>New</i>	S. 23 (1)	S. 18, latter half
S. 27	<i>New</i>	S. 24	S. 23
S. 28	S. 58	S. 29 (2), S. 38 (2), and S. 38 (3)	S. 55 and S. 57
S. 29 (1)	S. 22, para. 2	S. 14 (1), part,	S. 85, earlier part
S. 29 (2)	S. 23	S. 14 (4)	..
S. 29 (3)	S. 24	S. 14 (2) and 14(3)	S. 86
S. 29 (4)	S. 25	S. 14 (1) (a) and; (b)	S. 85, later part
S. 30 (a)	S. 46, para. 4 and S. 47 main, part	S. 31 (2)	S. 30, part
S. 30 (b)	S. 46, para. 5 and S. 48	S. 31 (3), part	S. 30, part
S. 31	S. 51	S. 31 (3), part and S. 32 (3)	S. 30, part and S. 41
S. 32	S. 56	S. 32 (2)	S. 32
S. 33	<i>New</i>	S. 32 (6)	S. 33
S. 34	S. 16 (1), part	S. 34 (1), part and 34 (2)	S. 34
S. 35	S. 16 (2)	..	..
S. 36	S. 49	S. 34 (4)	S. 35
S. 37	S. 54	S. 34 (1), latter half	S. 9 (5)
S. 38	S. 55	..	S. 40, latter half
S. 39	S. 50, latter half	S. 35	S. 36 & S. 37
S. 40	S. 52, para. 1, part	S. 33	S. 39, earlier, half
S. 41 (1)	S. 52, para 1, part	S. 16 (1)	S. 38
S. 41 (2)	S. 52, para. 2	..	..

1	2	3	
S. 42	S. 47, exception	..	..
S. 43	S. 57	..	..
S. 44	<i>New</i>	S. 37, part	S. 50, part
S. 45	S. 50, earlier, half	..	..
S. 46	S. 60	S. 36 (1) (a) and (b);	S. 47
S. 47	<i>New</i>	S. 38, part	S. 51, part
S. 48	<i>New</i>	S. 37, part	S. 50, part
S. 49	S. 59, main para.	S. 36 (2) and 36(5)	S. 52 (2)
S. 50	S. 59, proviso	..	..
S. 51 (1)	S. 53	S. 29 (3)	S. 57, latter half
S. 51 (2)	<i>New</i>	S. 38 (3)	..
S. 52	<i>New</i>	S. 38 (2)	S. 57, earlier half
S. 53	S. 45A	S. 69	..
S. 54	<i>New</i>	..	..
S. 55	<i>New</i>	S. 56	S. 63
S. 56 (1)	S. 30, part	S. 55 (1)	S. 61
(2)	<i>New</i>	S. 53 (f)	..
(3)	S. 32, part	S. 55 (2)	S. 62
(4)	S. 41	..	..
S. 57(1)	S. 30, part	S. 73, para. 2 and S. 55 (1)	S. 61 read with S. 185
S. 57 (2)	S. 31	S. 74	..
S. 58	S. 32, part	S. 88 (1)	S. 60
S. 59	S. 35, para. 1, part	S. 55 (2)	S. 66, last para
S. 60 (1) & (2)	S. 37, part	..	..
(3)	S. 38, part	..	..
S. 61	S. 32, part	..	..
	S. 35, para. 1, part	..	..
	S. 37, part	..	..
	S. 38, part	..	..
S. 62	S. 39	..	..
S. 63	S. 36	..	..
S. 64(1)	<i>New</i>	S. 28 (9)	S. 29
S. 64(2)	<i>New</i>	..	..
S. 64(3)	S. 43, Exc. I	..	S. 121 (2)
S. 65	S. 43, Exc. II	..	S. 28
S. 66 (1)	S. 28, earlier part	S. 26(1)	S. 69, 20, part
(2)	S. 28, latter part	..	..
S. 67	S. 29	S. 26 (1), part	S. 20, part
S. 68	<i>New</i>	S. 58	S. 65, part
S. 69 (1)	S. 64, para. 1 part	S. 45, 1st line	S. 70, part
main para.	..	..	..
S. 69 (1) Exc.	S. 64, Exc.	S. 87	S. 70, part
S. 69 (2)	<i>New</i>	..	..
S. 70 (1)	S. 93, para. 1 part	S. 48, part	S. 89, part
(2)	S. 93, para. 2	S. 48, part	S. 89, part
S. 71	S. 104	S. 51 (2)	S. 152
S. 72	<i>New</i>	..	..
S. 73 (1)	<i>New</i>	..	..
(2)	S. 64, para. 1, part	S. 45 (3) part	S. 72 (1)
(3)	S. 64, para. 1, part and S. 75	S. 45 (3), part and S. 45 (6)	S. 72 (4), and S. 78
S. 73 (4) (i)	S. 66	S. 45 (1)	S. 71, earlier half
(4) (ii)	S. 74	S. 45 (2)	S. 71, latter half, part.

1	2	3	4
S. 73 (4) (iii)	S. 67, earlier part	S. 74 (1)	S. 186 ...
(4) (iv)	S. 72	S. 45 (2) read	S. 71, latter half,
(4) (v)	S. 73	with S. 73	part
(5)	S. 65	S. 45 (3), part	S. 72 (2)
(6) (i)	S. 68 & S. 69	S. 45 (4) (a)	S. 73 (1)
(6) (ii)	New	S. 45 (4) (b)	S. 73 (2)
(6) (iii)	S. 70	S. 45 (4) (c)	S. 73 (3)
(6) (iv)	S. 71, part	S. 45 (4) (d)	S. 73 (4)
(6) Expln.	New	...	...
(7)	S. 75A, part	S. 46 (1)	S. 81
S. 74 (1)	S. 64, para. 2	S. 45 (8) and	S. 74, part
(2)	New	S. 52 (4), part	...
S. 75	...	...	...
Cl. (a)	S. 76 (a), para. 1	...	...
(b)	S. 76 (a), para. 2	...	...
(c)	S. 76 (a), para. 3	S. 46 (5)	...
(d)	S. 76 (a), para. 4	...	...
(e)	S. 76 (b)	S. 46 (2) (c), part	S. 82 (3), part
(f)	S. 76 (c)	S. 46 (2) (c), part	S. 82 (3), part
(g)	S. 76 (d)	...	...
(h)	New	S. 46 (2) (b)	S. 82 (2)
(i)	New	S. 46 (2) (d)	S. 80
(j)	New	S. 46 (2) (a), para. 1	S. 82 (1)
(k)	New	...	...
Explanation	New	S. 46 (2) (a), para 2.	...
S. 76 (1)	S. 78	S. 59 (1), part	S. 119 (1), part
(2)	S. 82 (c)	S. 59 (1), part	S. 119 (1), part
(3)	New	S. 59 (3)	S. 119 (2)
(4)	New	S. 59 (2)	S. 121
(5)	S. 89, part	S. 64 (1), pro- viso.	...
S. 77	S. 81	S. 52 (4), part	S. 74, part
S. 78 (1) (a)	S. 82 (a)	S. 64	S. 119 (3)
(1) (b)	S. 82 (b)	S. 62	S. 122
(1) (c)	S. 90	S. 61	S. 119 (5)
(2)	New	...	S. 120 (5) and (6)
(3)	S. 40	...	...
S. 79 (1)	S. 64, para. 1	S. 45 &	S. 70, part
(2)	S. 64, para. 1, part, read with Exc.	S. 87 (2)	S. 70, part
S. 80	S. 86, main para. part.	S. 87 (1)	...
S. 81 (1)	S. 87, para. 1	S. 44 (2)	S. 142, part
(2)	S. 87, para. 2	S. 64 (1), main para., part.	S. 124, part
(3)	S. 87, para. 3	...	...
(4)	S. 88	...	...
S. 82 (a)	S. 79	S. 64 (1), main para., part	S. 124, part
(b)	S. 80, para. 1	S. 9(3)	S. 17 (2)
S. 83	New	...	...
S. 84	S. 92	S. 47 (1)	S. 83
S. 85, opening lines	S. 93, para. 1, part.	S. 48, para 1, part.	S. 89, part
Cl. (a)	S. 93, para. 1, part	S. 48, para. 1. part	S. 89, part

1	2	3	4
Cl. (b)	S. 94, para. 1, part.	S. 49 (8), (9) and (10).	S. 97, part S. 98 and S. 101.
S. 86	S. 94, para. 1, part	S. 49 (5)	S. 96
S. 87 (1)	S. 94, para. 1, part	S. 49 (12)	S. 102
(2)	S. 96	S. 49 (13)	S. 94, part
S. 88	S. 94 para. 2	S. 49 (15)	S. 105
S. 89	S. 95	...	...
S. 90	S. 97	...	...
S. 91	S. 98	S. 50 (2)	S. 109, S. 112 S. 114 & S. 115
S. 92	S. 99	S. 51 (1) and S. 54 (4)	...
S. 93 (1)	S. 100, para. 1	S. 51 (2)	S. 152 & S. 154
(2)	S. 100, para. 2	S. 51 (5)	S. 159
S. 94	S. 101	S. 51 (7)	S. 153
S. 95	S. 102	...	...
S. 96	S. 103	S. 51 (6) (b)	S. 156, part
S. 97	S. 104A	S. 93	S. 155, latter half.
S. 98	S. 105	S. 45 (2) latter half, S. 74(2) and S. 86 (2).	S. 193
S. 99 (1)	S. 106, para. 1	S. 49 (12) (b)	S. 104 and S. 103 (3)
(2)	S. 106, para. 2	S. 49 (12) (a)	S. 103 (1) and (2).
S. 100	S. 107	S. 49 (14)	S. 107
S. 101 (1) (a)	S. 117 (a)	S. 57 (1), part	...
S. 101 (1) (b)	New	S. 57 (1), part	...
(1) (c)	S. 117 (c)	S. 57 (1), part	...
(1) (d)	S. 117 (b) and (d)	S. 57 (2)	...
(1) (e)	New	...	...
(2)	S. 117 (e), earlier half	...	...
(3)	S. 117 (e), latter half	...	...
S. 102	S. 118	S. 13 (1), 30 (1), 30 (2), 32 (5) and 36 (4)	S. 11, S. 24 and 45
S. 103	S. 119	...	...
S. 104	New	S. 54 (2)	S. 62(1)
S. 105	S. 120	S. 54 (2) (a)	...
S. 106	S. 121	S. 54 (2) (c), S. 55 (1) (b), and 88 (2)	S. 62 (2)
S. 107	S. 122	S. 55 (2) (b)	S. 66, read with S. 65
S. 108			
Cl. (a), main para.	S. 134, part	S. 72 (1)	...
Cl. (a), prov. (i)	S. 136	...	...
Cl. (a), prov. (ii)	New	S. 72 (1), prov. (a)	...
Cl. (b) (i)	S. 134, part	...	...
Cl. (b) (ii)	New	S. 72 (3), part	...
Cl. (b) (iii)	New	S. 72 (5)	...
Cl. (b) (iv)	S. 135, part	...	...
Cl. (b) (v)	S. 135, part	S. 72 (3) part	...
Cl. (b) (vi)	New	S. 72 (4)	...
S. 109	S. 137	...	...
S. 110	New	...	...
S. 111	New	S. 6 (2)	S. 128

1	2	3	4
S. 112	<i>New</i>	S. 5 (1)	S. 8 (2) and 8(3)
S. 113	S. 33	...	...
S. 114 (1)	S. 63	S. 42, earlier, half	S. 136
(2)	S. 83	S. 42, latter half	...
S. 115	S. 34	...	...
S. 116	S. 42	...	...
S. 117	<i>New</i>	...	...
S. 118	<i>New</i>	...	...
S. 119	S. 61, para. 1, part	S. 40	S. 143 (1) and 144.
S. 120 (1) (a)	S. 61, para. 1, part & S. 75, part	S. 41 (1) (a) (c) and (d)	S. 145, opening lines & (2) & (3).
S. 120 (1) (b) (i)	S. 61, para. 3, part	...	...
S. 120 (1) (b) (ii)	<i>New</i>	...	...
S. 120 (1) (b) (iii)	<i>New</i>	...	...
S. 120 (1) (b) (iv)	S. 71 part	...	...
S. 120 (1) (c)	<i>New</i>	S. 41 (1) (b)	S. 145 (1)
S. 120 (2)	S. 75A part	...	...
S. 120 (3) (a)	<i>New</i>	S. 41 (2) (a)	S. 148 (1), part
S. 120 (3) (b)	S. 61, para. 3, part	...	S. 148 (1), part
S. 120 (3) (c)	<i>New</i>	S. 39 (4)	...
S. 120 (3) (d)	<i>New</i>	S. 41 (2) (b)	S. 148 (2)
S. 120 (3) (e)	<i>New</i>	S. 41 (2) (c)	S. 148 (3)
S. 120 (4)	<i>New</i>	S. 41 (3)	...
S. 121	S. 61, para. 4	S. 41 (1) (e)	...
S. 122 (1) (a)	S. 91, para. 1, part	S. 43 (1) (a)	S. 149 (1)
(1) (b)	S. 91, para. 1, part	S. 43 (1) (b)	S. 149 (2)
(1) (c)	S. 91, para. 2	...	...
(2)	<i>New</i>	S. 43 (2)	S. 151
S. 123, main para.	<i>New</i>	S. 44 (1)	S. 142, earlier part
Expln. Cl. (a) to (d)	S. 86, Expl.	...	S. 141 (1) to (4)
Expln. Cl. (e)	S. 86, main para. part	...	S. 141 (5)
S. 124	<i>New</i>	S. 52 (2)	...
S. 125 (1)	S. 93, para 1, part	S. 48, part	S. 89, part
S. 125 (2)	<i>New</i>	S. 48, part	S. 89, part
S. 126	S. 77	...	...
S. 127	<i>New</i>	...	...
S. 128	S. 115	...	S. 131, last sentence.
S. 129	S. 116	S. 67 (1)	...
S. 130	S. 108	S. 65 (1)	S. 161
S. 131	S. 109	S. 65 (3)	S. 162
S. 132	S. 110	S. 65 (4)	S. 163
S. 133 main para.	S. 111, para. 1	S. 66	S. 164
prov. (a)	S. 111, para. 2	S. 67 (2)	S. 165, part and 168
prov. (b)	S. 112	S. 67 (1)	S. 167
S. 134	S. 113	S. 68 (1) (3) and (4)	S. 171 to 173
S. 135	<i>New</i>	S. 68 (2)	S. 174
S. 136 (1)	<i>New</i>	S. 68 (6)	S. 177
S. 136 (2)	S. 114	S. 68 (5)	S. 175, latter half
S. 137	<i>New</i>	S. 65 (5)	S. 166

1	2	3	4
S. 138	S. 132	S. 71 (1) 71 (2) 71 (4) 71 (6)	S. 178 S. 180 S. 181 S. 183 S. 179
S. 139	S. 133	S. 71 (3)	
S. 140	S. 62	S. 40 (1) read with S. 89	...
S. 141 (1)	S. 85 (1)	S. 60 read with S. 73, para. 2	...
(2)	S. 85 (2)	...	...
S. 142	New	S. 75	...
S. 143 (1)	S. 123	S. 76 (1)	...
(2)	S. 124	S. 76 (2)	...
S. 144	New	...	...
S. 145 (1)	New	S. 77 (1)	...
(2)	S. 125, para. 1	S. 77 (2)	...
(3)	S. 125, para. 2	S. 77 (3)	...
(4)	S. 125, para. 3	S. 77 (4)	...
(5)	S. 125, para. 4	S. 77 (5)	...
(6)	New	S. 77 (6)	...
S. 146	New	S. 78	...
S. 147	S. 126	...	...
S. 148	S. 127	S. 79 (1)	...
S. 149 main para	S. 129	S. 79 (2), main para.	...
proviso	S. 89, part	S. 79 (2), proviso	...
S. 150	S. 128	S. 80	...
S. 151	S. 130	S. 81	...
S. 152	S. 131	S. 82	...
S. 153	New	...	...
S. 154	New	S. 53 (1) read with S. 73, para. 2	...
S. 155 (1)	S. 84 (1)	S. 74 (1)	...
(2)	S. 84 (3)	S. 74 (3)	...
S. 156	S. 85A	...	...
S. 157	S. 131 A	...	...
S. 158	New	...	...

APPENDIX II

TABLE C

Showing the contents of the sections in Appendix I with the corresponding section in the existing Act

Section in Appendix I	Contents	Corresponding section in existing Act
PART I—GENERAL		
CHAPTER I—PRELIMINARY		
Section 1	Short title, extent and commencement	
Section 2	Saving	S. 1, para. 2, part.
Section 3	Operation of the Act on negotiable instruments	<i>New</i>
Section 4	Definitions—	
	(1) Acceptor	S. 7, para. 3.
	(2) Acceptor for honour	S. 7, para. 4.
	(3) Accommodation party	<i>New</i>
	(4) "At sight" "on presentment", "after sight"	S. 21
	(5) Banker	S. 3, amplified
	(6) Bearer	<i>New</i>
	(7) (i) Bill	<i>New</i>
	(ii) Bill of exchange	S. 5, para. 1.
	(8) Cheque	S. 6.
	(9) Delivery	<i>New</i>
	(10) "Drawer" and "drawee"	S. 7, para. 1.
	(11) "Drawee in case of need"	S. 7, para. 2.
	(12) "Holder"	S. 8.
	Explanation	<i>New</i>
	(13) "Holder in due course"	S. 9.
	(14) "Indorsement" "indorser" and "indorsee"	S. 15 S. 16 (1), part.
	(15) "Inland instrument" and "Foreign instrument"	S.S. 11 and 12.
	(16) "Instrument"	<i>New</i>
	(17) "Instrument payable to bearer"	S. 13 (1), Expln. (ii)
	(18) Instrument payable to order	S. 13 (i), Expln. (i)
	(19) "Issue"	<i>New</i>
	(20) "Maker"	<i>New</i>
	(21) "Material alteration"	<i>New</i>
	(22) "Maturity"	S. 22, para. 1
	(23) "Negotiable instrument"	S. 13 (1) main para.
	(24) "Negotiation"	S. 14
	(25) "Notary"	<i>New</i>
	(26) "Note"	<i>New</i>
	(27) "Payee"	S. 7, para. 5.
	(28) "Payment in due course"	S. 10
	(29) "Promissory Note"	S. 4.
	(30) "Representative"	<i>New</i>

CHAPTER II

FORM AND INTERPRETATION

1	2	3
Section 5	Applicability of the Contract Act	S. 26, para 1, modified.
Section 6	Incapacity of minor	S. 26, para, 2 modified
Section 7	Corporation's power	S. 26, para. 3
Section 8	Agent's authority	S. 27
Section 9	Authority of partners	<i>New</i>
Section 10	Instrument made without consideration	(1) S. 43, para. 1 earlier half. (2) S. 43, para. 1 latter half.
Section 11	Partial absence or failure of money consideration.	S. 44, para. 1.
Section 12	Partial failure of consideration not consisting of money	S. 45
Section 13	" Certain sum " " unconditional " " certain person " and fictitious payee	(a) S. 5, para 3. (b) S. 5, para 2. (c) <i>New</i> (d) S. 5, para 4, (e) <i>New</i>
Section 14	Instruments payable on demand	(a) S. 21, earlier half. (b) S. 19, part. (c) S. 19, part (d) S. 35, para. 2, modified.
Section 15	When instrument payable on demand overdue	<i>New</i>
Section 16	" After sight "	S. 21, latter half.
Section 17	Instrument payable at a determinable future time	<i>New</i>
Section 18	Effect of drawing or indorsing instrument payable to order	S. 13 (1), Expl. (iii)
Section 19	Effect of <i>ante</i> dating and post dating	<i>New</i>
Section 20	Inchoate instrument	S. 20.
Section 21	Negotiable instrument when complete	(1) S. 46, para. 1 (2) S. 46, para. 2. (3) S. 46, para. 3
Section 22	Immediate parties	S. 44, Expln.
Section 23	Difference in figures and words	S. 18
Section 24	Ambiguous instruments	S. 17
Section 25	Payees may be joint	S. 13 (2).
Section 26	Signature in trade or assumed name	<i>New</i>
Section 27	Forged or unauthorised signature	<i>New</i>
Section 28	Defective title	S. 58, modified.
Section 29	Maturity how determined	(1) S. 22, para. 2. (2) S. 23 (3) S. 24 (4) S. 25

CHAPTER III

NEGOTIATION

Section 30	Mode of negotiation	(a) S. 46, para. 4 and S. 47, main para. (b) S. 46, para. 5 and S. 48
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1	2	3
Section 31	Persons entitled to negotiate	S. 51
Section 32	Requisites indorsement	S. 56
Section 33	Kinds of indorsements	<i>New</i>
Section 34	Indorsement in blank and in full	S. 16 (i) part.
Section 35	Provision for payee to apply to indorsee	S. 16 (2)
Section 36	Conversion of indorsement in blank into indorsement in full	S. 49
Section 37	Instruments indorsed in blank	S. 54
Section 38	Indorsement in blank followed by indorsement in full	S. 55
Section 39	Restrictive indorsement	S. 50, latter half modified.
Section 40	Conditional indorsement	S. 52, para. 1, part
Section 41	Qualified indorsement	(1) S. 52, para. 1, part (2) S. 52, para. 2.
Section 42	Conditional delivery	S. 47, Exception;
Section 43	Negotiation by legal representatives	S. 57
Section 44	Negotiation back before maturity	<i>New</i>
Section 45	Effect of negotiation	S. 50, earlier half modified.
Section 46	When negotiability ceases	S. 60.

CHAPTER IV RIGHTS OF HOLDER AND HOLDER IN DUE COURSE

Section 47	Right of holder	<i>New</i>
Section 48	Rights of holder of an instrument negotiated back to him	<i>New</i>
Section 49	Instrument acquired after dishonour or when overdue	S. 59, main para.
Section 50	Accommodation note or bill	S. 59, Proviso.
Section 51	Holder claiming through holder in due course	(1) S. 53, modified. (2) <i>New</i>
Section 52	Rights of holder in due course	<i>New</i>
Section 53	Holder's right to duplicate of lost instrument	S. 45A.

CHAPTER V LIABILITY OF PARTIES

Section 54	Scope of chapter	<i>New</i>
Section 55	Stranger signing instrument presumed to be indorser	<i>New</i>
Section 56	Liability of drawer or acceptor of a bill of exchange	(1) S. 30, part. modified. (2) <i>New</i> (3) S. 32, part, modified (4) S. 41.
Section 57	Liability of drawer or drawee of cheque	(1) S. 30, part (2) S. 31
Section 58	Liability of a maker of a promissory note	S. 32, part, modified.
Section 59	Liability of indorser of any instrument	S. 35, para. 1, part modified.
Section 60	Extent of liability of parties	(1) S. 37, part (2) S. 37, part (3) S. 38, part
Section 61	Provision for contract to the contrary	S. 32, part S. 45 para. 1 part S. 37, part, S. 38 part.
Section 62	Liability of surety	S. 39
Section 63	Duration of liability	S. 36

1	2	3
Section 64	Liability of accommodation party and position of accommodated party	(1) <i>New</i> (2) <i>New</i> (3) S. 43 Exception
Section 65	Liability of party inducing another to make etc. an instrument	S. 43 Exception II
Section 66	Liability of person signing as agent	(1) S. 28, earlier part modified. (2) S. 28, later part.
Section 67	Liability of legal representative	S. 29
Section 68	Transfer by delivery and transferee	<i>New</i>
Section 69	Presentment	(1) S. 64, para. 1, part Exception S. 64 Exc. modified. (2) <i>New</i>
Section 70	Notice of dishonour for non-payment when obligatory	(1) S. 93, para. 1, part (2) S. 93, para. 2
Section 71	Necessity for noting and protest	S. 104

CHAPTER VI

PRESENTMENT FOR PAYMENTS

Section 72	Definition	<i>New</i>
Section 73	Rules governing presentment for payment	(1) <i>New</i> (2) S. 64 para. 1, part (3) S. 64, para. 1, part & S. 75 (4) (i) S. 66 (ii) S. 74 (iii) S. 67, earlier part (iv) S. 72 (v) S. 73 (5) S. 65 (6) (i) Ss. 68—69. modified. (ii) <i>New</i> (iii) S. 70 (iv) S. 71, part Explanation <i>New</i> (7) S. 75A part.
Section 74	What constitutes valid presentment and the mode of presentment.	(1) S. 64 para. 2. modified. (2) <i>New</i>
Section 75	When presentment unnecessary	S. 76 (a) Cl. (a) para. 1, (b) Cl. (a) para. 2. (c) Cl. (a) para. 3. (d) Cl. (a) para. 4. (e) Cl. (b) (f) Cl. (c) (g) Cl. (d) (h) <i>New</i> (i) <i>New</i> (j) <i>New</i> (k) <i>New</i> Explanation <i>New</i>

CHAPTER VII

PAYMENT, DISCHARGE AND INTEREST

Section 76	Discharge by payment	(1) S. 78 modified. (2) S. 82(c) modified. (3) <i>New</i> (4) <i>New</i> (5) S. 89, part
Section 77	Instrument to be delivered on payment	S. 81
Section 78	Other modes of discharge	(1) (a) S. 82 (a) (b) S. 82(b) (c) S. 90, modified (2) <i>New</i> (3) S. 40.
Section 79	Discharge for non-presentment	(1) S. 64, para. 1, part. (2) S. 64, para. 1, part, read with exceptions.
Section 80	Discharge of parties not consenting to qualified or limited acceptance.	S. 86, main para. part.
Section 81	Discharge by material alteration	(1) S. 87, para. 1, modified. (2) S. 87, para. 2. (3) S. 87, para. 3 (4) S. 88.
Section 82	Interest when rate specified and not specified.	(a) S. 79, modified (b) S. 80, para. 1, modified.

CHAPTER VIII

NOTICE OF DISHONOUR

Section 83	Dishonour	<i>New</i>
Section 84	Dishonour by non-payment	S. 92.
Section 85	Notice of dishonour by whom and to whom to be given.	S. 93, para. 1, part (a) S. 93, para. 1, part. (b) S. 94, para. 1, part.
Section 86	Mode in which notice of dishonour should be given.	S. 94, para. 1, part
Section 87	Time and place of notice	(1) S. 94, para. 1, part (2) S. 96.
Section 88	Notice miscarried in post.	S. 94, para. 2.
Section 89	Party receiving must transmit notice of dishonour.	S. 95.
Section 90	When party to whom notice given is dead.	S. 97
Section 91	When notice of dishonour is unnecessary	S. 98.

CHAPTER IX

NOTING AND PROTEST

Section 92	Noting	S. 99
Section 93	Protest	(1) S. 100, para. 1 (2) S. 100, para. 2.
Section 94	Contents of protest	S. 101
Section 95	Notice of protest	S. 102
Section 96	Protest for non-payment after dishonour by non-acceptance.	S. 103
Section 97	When noting equivalent to protest	S. 104A

1

2

3

CHAPTER X**REASONABLE TIME**

- Section 98 . Reasonable time S. 105
- Section 99 . Reasonable time for giving notice of dishonour (1) S. 106, para. 1 modified.
(2) S. 106, para. 2 modified.
- Section 100 . Reasonable time for transmitting such notice. S. 107

CHAPTER XI**COMPENSATION**

- Section 101 . Rule as to compensation (1) (a) S. 117(a)
(b) *New*
(c) S. 117(c)
(d) S. 117 (b) and (d) modified.
(e) *New*
(2) S. 117 (e), earlier half.
(3) S. 117 (e), latter half.

CHAPTER XII**SPECIAL RULES OF EVIDENCE**

- Section 102 . Presumptions as to negotiable instruments S. 118
- Section 103 . Presumption on proof of protest S. 119
- Section 104 . Estoppel against acceptor *New*
- Section 105 . Estoppel against denying original validity of instrument. S. 120
- Section 106 . Estoppel against denying capacity of payee to indorse. S. 121
- Section 107 . Estoppel against denying signature or capacity of prior party. S. 122

CHAPTER XIII**CONFLICT OF LAWS**

- Section 108 . Law governing liability of maker, acceptor or indorser of a foreign instrument. (a) S. 134, part, modified.
Proviso—(i) S. 136.
(ii) *New*
(v) (i) S. 134, part, modified.
(ii) *New*
(iii) *New*
(iv) S. 135, part
(v) S. 135, part
(vi) *New*
- Section 109 . Presumption as to foreign law S. 137.

PART II

BILLS OF EXCHANGE

Section 110	. Presentment	<i>New</i>
Section 111	. Several drawees	<i>New</i>
Section 112	. In whose favour a bill may be drawn	<i>New</i>
Section 113	. Only drawee can be acceptor except in case of need or for honour.	<i>New</i> S. 33
Section 114	. Time for deliberation by drawee	(1) S. 63 (2) S. 83
Section 115	. Acceptance by several drawees not partners	S. 34
Section 116	. Acceptance of bill drawn in fictitious name	S. 42
Section 117	. When presentment for acceptance is necessary	<i>New</i>
Section 118	. Acceptance of overdue bill	<i>New</i>
Section 119	. Time for presentment for acceptance of a bill payable after sight.	S. 61, para. 1, part modified.
Section 120	. Rules as to presentment for acceptance and excuses for non-presentment.	(1) (a) S. 61, part 1, part, modified and S. 75, part. (b) (i) S. 61, para. 3, part. (ii) <i>New</i> (iii) <i>New</i> (iv) S. 71, part (c) <i>New</i> (2) S. 75A, part (3) (a) <i>New</i> (b) S. 61, para. 3, part, modified. (c) <i>New</i> ; (d) <i>New</i> (e) <i>New</i> (4) <i>New</i>
Section 121	. Presentment by post	S. 61, para. 4.
Section 122	. Dishonour by non-acceptance and its consequences.	(1) (a) S. 91 para. 1, part. (b) S. 91 para. 1, part. (c) S. 91, para. 2 (2) <i>New</i>
Section 123	. Qualified acceptance	<i>New</i> Exp'n. (a) to (d)— S. 86, Expl. Exp'n.—(e) S. 86, main para. part.
Section 124	. Non-presentment for payment in cases of qualified acceptance when does not discharge the acceptor.	<i>New</i>
Section 125	. Notice of dishonour for non-acceptance	(1) S. 93, para. 1, part modified. (2) <i>New</i>
Section 126	. Liability of banker for negligently dealing with bill presented for payment.	S. 77
Section 127	. Mode of giving notice of dishonour	<i>New</i>
Section 128	. Drawee in case of need	S. 115
Section 129	. Acceptance and payment without protest	S. 116
Section 130	. Acceptance for honour	S. 108
Section 131	. How acceptance for honour must be made	S. 109
Section 132	. Acceptance not specifying for whose honour it is made	S. 110

1	2	3
Section 133	Liability of acceptor for honour	S. 111, para. 1. Proviso—(a) S. 111, para. 2. (b) S. 112. S. 113.
Section 134	Payment for honour	New
Section 135	Two or more persons offering to pay for honour	(1) New
Section 136	Rights and duties of payer for honour	(2) S. 114 New
Section 137	Calculation of maturity in case of a bill accepted for honour.	S. 132.
Section 138	Set of bills	S. 133
Section 139	Holder of first acquired part entitled to all	

PART III

PROMISSORY NOTES

Section 140	Presentment of promissory note for sight	S. 62
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PART IV

CHEQUES

Section 141	Cheque payable to order or bearer	(1) S. 85 (1) (2) S. 85(2)
Section 142	Revocation of banker's authority	New (1) S. 123
Section 143	General and special crossing defined	(2) S. 124
Section 144	Cheque crossed "account payee".	New
Section 145	Crossing by drawer or after issue	(1) New (2) S. 125, para. 1 (3) S. 125, para. 2 (4) S. 125, para. 3. (5) S. 125, para. 4. (6) New
Section 146	Crossing a material part of a cheque	New
Section 147	Payment of a cheque crossed generally or specially.	S. 126
Section 148	Duties of banker as to crossed cheques	S. 127
Section 149	Liability of a banker paying crossed cheques otherwise than to a banker.	S. 129, modified Proviso—S. 89, part
Section 150	Protection to banker and drawer where cheque is crossed.	S. 128, modified
Section 151	Cheque bearing words "not negotiable".	S. 130
Section 152	Protection to collecting banker	S. 131
Section 153	Protection to banker crediting cheque crossed "account payee".	New
Section 154	Cheque not operating as assignment of funds	New
Section 155	When cheque not duly presented and drawer damaged thereby.	(1) S. 84(1) (2) S. 84(3)
Section 156	Drafts.	S. 85A
Section 157	Application of this Chapter to drafts.	S. 131A

PART V

MISCELLANEOUS

Section 158	Repeal	New
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APPENDIX III

SUGGESTIONS REGARDING OTHER ACTS

Evidence Act.

S. 117—Omit—

(a) The words—

“No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it.”

(b) Explanation (1)

[Para. 164]



APPENDIX IV

COMMERCIAL BODIES & ASSOCIATIONS WHOSE SUGGESTIONS WERE PARTICULARLY INVITED

1. The Secretary Ahmedabad Maskati Cloth Market Association, Maskati Cloth Market, Railwaypura, Post Box No. 2, Ahmedabad.
2. The Secretary, Ahmedabad Mill owners' Asson., Navrangpura, Post Box. No.7 Ahmedabad.
3. The Secretary, All-India Food Preservers' Association, 93, Apollo Street, Bombay-1.
4. The Secretary, All-India Importers' Asson., Churchgate House, Veer Nariman Road, Fort, Bombay.
5. The Secretary, All-India Sindwork Merchants Asson., 231, Hornby Road, (4th floor) Bombay.
6. The Secretary, All-India Starch Manufacturers Association, 12, Rampart Row Bombay.
7. The Secretary, Andhra Chamber of Commerce, 272-273, Angappa Naick St. G. T. Madras.
8. The Secretary, Association of Merchants & Mfrs. of Textiles Stores & Machinery Sir Vithaldas Chambers (Top Floor), 16, Apollo Street, Fort, Bombay.
9. The Secretary, Automotive Mfrs. Association of India, 'India Exchange', Calcutta-1
10. The Secretary, Bengal Glass Mfrs. Asson., P-11, Mission Row Extension, Calcutta
11. The Secretary, Bengal National Chamber of Commerce & Industry, P-11, Mission Row Extension, Calcutta.
12. The Secretary, Bengal Sugar Merchants' Association, 161/1, Harrison Road, Calcutta
13. The Secretary, Bharat Chamber of Commerce, State Bank Building, (Burrabazar Branch), Calcutta-7.
14. The Secretary, Bihar Chamber of Commerce, Judges' Court Road, Post Box No. 71, Patna-1.
15. The Secretary, Bihar Industries Asson., Fraser Road, Post Box No. 7, Patna-1.
16. The Secretary, Bombay Bullion Association Ltd., Shaikh Memon Street, Bombay.
17. The Secretary, Bombay, Oilseeds & Oils Exchange Ltd., Jenabai Building, Musjid Bunder Road, Bombay.
18. The Secretary, Bombay Cotton Merchants and Muccadums Association, S/72-73 Cotton Exchange Bldg., Sewree, Post Box No. 15, Bombay.
19. The Secretary, Bombay Piece-Goods Merchants Mahajan, Mulji Jetha Market Halls Shaikh Memon Street, Bombay.
20. The Secretary, Bombay Shroffs Asson., Ltd., 233, Shroff Bazar, Bombay.
21. The Secretary, Bombay Sugar Merchants Association Ltd., 104-114, Frere Road Bombay-9.
22. The Secretary, Bombay Yarn Merchants' Asson., & Exchange Ltd., 111, Chawla Building, Tambakanata, Post Box No. 3, Bombay.
23. The Secretary, Calcutta Biri Tobacco Merchants Asson., 1, Rup Chand Roy Street, Calcutta-7.
24. The Secretary, Calcutta Bullion Asson., 68, Cotton Street, Calcutta.
25. The Secretary, Calcutta Jute Exchange Ltd., 5/1, Royal Exchange Place, Calcutta.
26. The Secretary, Calcutta Wheat & Seeds' Asson., 149, Cotton Street, Calcutta.
27. The Secretary, Calcutta Kirana (Spices) Merchants' Asson., 29, Armenian Street Calcutta.
28. The Secretary, Cycle Manufacturers' Asson., of India, 'India Exchange', Calcutta-1.
29. The Secretary, Delhi Chamber of Commerce, 'Dilbar Building' Deshbandhu Gupta Road, Paharganj, New Delhi-1.

30. The Secretary, Delhi Factory Owners' Federation, Scindia House, Curzon Rd. Post Box No. 130., New Delhi-1.
31. The Secretary, Delhi Hindustani Mercantile Association, 641/1213, Chandni Chowk, Delhi.
32. The Secretary, Eastern Chamber of Commerce, 15, Clive Row, Calcutta.
33. The Secretary, East India Cotton Association, Ltd., Cotton Exchange, Marwari Bazar, Bombay.
34. The Secretary, East India Jute & Hessian Exchange, 43, Netaji Subhas Road, Calcutta.
35. The Secretary, Eastern Zone Mining Asson., Chaibasa (Singbhum), Bihar, S.E.Rly.
36. The Secretary, Engineering Association of India, 'India Exchange', Calcutta-1.
37. The Secretary, Employers' Association, 'India Exchange', Calcutta-1.
38. The Secretary, Fan Makers' Asson. of India, India Exchange (7th Floor), Calcutta.
39. The Secretary, Federation of Gujrat Mills and Industries, Baroda.
40. The Secretary, Federation of Electricity Undertakings of India, Killick Bldg., Home St., Bombay.
41. The Secretary, Federation of Woollen Mfrs. in India, J. K. Bldg., Dougall Road, Ballard Estate, Bombay.
42. The Secretary, Federation of Commerce and Industries (Hyderabad St.), 352, Sultan Bazar, Hyderabad-1.
43. The Secretary, Grain Oilseeds Merchants' Association, Masjid Bunder Road, Bombay.
44. The Secretary, Gujrat Vepari Mahamandal, Gujrat Samachar Bldg., Khanpur Ahmedabad.
45. The Secretary, Hindustan Chamber of Commerce, 168, Broadway, Gujarathi Mandal Bldg., (1st Floor), Madras.
46. The Secretary, Hindustani Merchants and Commission Agents' Asson., 342, Kalbadevi Road, Bombay.
47. The Secretary, Hyderabad (Dn.) Chamber of Commerce and Industries, 171, Chapel Road, Opp. Stanley Girls School, Near Hyderabad State Bank, Hyderabad.
48. The Secretary, Indian Banks Association, Devkaran Nanjee Bldgs., Elphinstone Circle, Fort, Bombay.
49. The Secretary, Indian Chamber of Commerce, 'India Exchange' Calcutta-1.
50. The Secretary, Indian Chamber of Commerce, 'Jagadalaya', Post Box No 200, Coimbatore.
51. The Secretary, Indian Chamber of Commerce, Mattancheri (Cochin).
52. The Secretary, Indian Chamber of Commerce, Tuticorin (S. India).
53. The Secretary, Indian Chemical Mfrs. Asson., 'India Exchange' (7th Floor, Calcutta-1.
54. The Secretary, Indian Chemical Merchants Association, India Exchange (8th Floor, Calcutta-1.
55. The Secretary, Indo-Afghan Chamber of Commerce, 586, Gandhi Cloth Market, Chandni Chowk, Delhi-6.
56. The Secretary, Indian Colliery Owners' Association, Post Box No. 70, Dhanbad.
57. The Secretary, Indian Confectionery Mfrs' Association, 'India Exchange' Calcutta-1
58. The Secretary, Indian Insurance Companies Association, Co-operative Insurance Bldg., Sir Pherozshah Mehta Road, Fort, Bombay.
59. The Secretary, Indian Insurance Companies Asson., India Exchange, Calcutta-1.
60. The Secretary, Indian Merchants, Chamber, Backbay Reclamation, Churchgate Street, Fort, Bombay.
61. The Secretary, Indian Mining Federation, 135, Canning Street, Calcutta.
62. The Secretary, Indian National Steamship Owners' Association, Scindia House, Ballard Estate, Bombay.
63. The Secretary, Indian Non-Ferrous Metals Mfrs' Association, 'India Exchange' (8th Floor), Calcutta-1.
64. The Secretary, Indian Paint Manufacturers' Association, 'India Exchange, (8th Floor), Calcutta-1.

65. The Secretary, Indian Paper Mills' Asson., 'India Exchange'. (8th Floor) Calcutta-1
66. The Secretary, Indian Produce Asson., 402, Upper Chitpore Road, Calcutta.
67. The Secretary, Indian Rope Manufacturers' Association, 'India Exchange' (8th Floor) Calcutta-1.
68. The Secretary, Indian Stock Exchange Ltd., 'Laxmi Building' Sir Phirozshah Mehta Road, Bombay.
69. The Secretary, Indian Soap & Toiletries Makers' Association, P-11, Mission Road Extension, Calcutta-1.
70. The Secretary, Indian Tea Planters' Asson., Post Box No. 74, Jalpaiguri.
71. The Secretary, Indian Sugar Mills' Asson., 'India Exchange' Calcutta-1.
72. The Hony. Gen. Secretary, Iron & Steel & Hardware, Merchants', Chamber of India, 'Steel Chambers' 153, Naryan Dhuru Street, Bombay-3.
73. The Secretary, Jaipur Chamber of Commerce, and Industry, Johri Bazar, Jaipur City.
74. The Secretary, Jute Balers' Association, 5 Royal Exchange Place. Calcutta.
75. The Secretary, Karnatak Chamber of Commerce, Post Box No. 16, Hubli.
76. The Secretary, Lantern Mfrs. Association, India Exchange (7th Floor) Calcutta-1.
77. The Secretary, Madhya Pradesh Millowners' Association, 11, South Tukoganj Indore.
78. The Secretary, Madhyabharat Chamber of Commerce and Industry, Dharam Mandir Road, Laskar (Gwalior).
79. The Secretary, Madhya Pradesh Mineral Industry Association, Above Khemka Motors, Residency Road, Nagpur.
80. The Secretary, Madhura Ramnad Chamber of Commerce, 90-92, East Avanimoola St., Madurai (S. India).
81. The Secretary, Madras Piecegoods Merchants' Association, 100, Godown Street Madras-1.
82. The Secretary, Maharashtra Chamber of Commerce, 12, Rampart Row (3rd Floor) Fort Bombay.
83. The Secretary Mahratta Chamber of Commerce, and Industries, Tilak Road, Poona-2
84. The Secretary, Merchants' Chamber of U.P., 15/17 Civil Lines, Kanpur.
85. The Secretary, Merchants' Chamber of Commerce, 173, Harrison Road, Calcutta-7
86. The Secretary, Mysore Chamber of Commerce, Bangalore City.
87. The Secretary, Nag Vidarbha Chamber of Commerce, Temple Road, Civil Station, Post Box No. 33, Nagpur-1.
88. The Secretary, Native Share & Stock Brokers' Association, Dalal Street, Fort, Bombay.
89. The Secretary, Northern India Chamber of Commerce, Ambala Cantonment.
90. The Secretary, Oriental Chamber of Commerce, 6, Clive Row, Calcutta.
91. The Secretary, Orissa Chamber of Commerce, Tinkonia Bagicha, Cuttack-1.
92. The Secretary, Pepper & Ginger Merchants' Association Ltd., 285-87, Narsi Natha Street, Bombay-9.
93. The Secretary, Plywood Mfrs., Association of India, P-11 Mission Row Extension Calcutta.
94. The Secretary Punjab Federation of Industry and Commerce, Amritsar.
95. The Secretary, Rajasthan Chamber of Commerce and Industry, Johri Bazar, Jaipur City.
96. The Secretary, Rajasthan Textile Mills Association, (Premises of Jaipur Spg. and Wvg. Mills Ltd.), Jaipur.
97. The Secretary, Rayon Mfrs. Association, Ewart House, Bruce Street, Fort, Bombay.
98. The Secretary, Saurashtra Millowners' Association, Dharangadhara House, Surendranagar.
99. The Secretary, Silk & Art Silk Mills Asson., Resham Bhawan, Ltd., 78, Veer Nariman Road, Fort, Bombay.
100. The Secretary, Silk Merchants' Association, 'DHANUKAR Building', Kalbadevi Road Bombay-2.

101. The Secretary, Saurashtra Ch. of Commerce, Mahatma Gandhi Road, Lokhan Bazar, Bhavnagar.
102. The Secretary, Southern India Chamber of Commerce, 28/30, North Beach Road, Madras-1.
103. The Secretary, Southern India Skin & Hide Merchants' Association, 16, Sydenham Rd., Periamet, Madras.
104. The Secretary, Southern India Millowners' Association, Race Course, Coimbatore.
105. The Secretary, Steel Re-rolling Mills Association of India, 20 Strand Road, Calcutta.
106. The Secretary, Surat Chamber of Commerce, 'Safe Deposit Chambers', Bhagtalao, Surat.
107. The Secretary, Tamil Chamber of Commerce, 310/311, Linghi Chetty St., (1st Floor) Madras-1.
108. The Secretary, Tea Association of India, India Exchange, (8th Floor) Calcutta-1.
109. The Secretary, Textile Mfrs Association. 4, Queens' Road, Amritsar.
110. The Secretary, United Chamber of Trade Associations, Katra Rathi, Nai Sarak Delhi.
111. The Secretary, United Planters Asson., of Southern India, Glenview Post Box No. 11 Coonoor (Nilgris).
112. The Secretary, U. P. Chamber of Commerce, 15/197 Civil Lines, Kanpur.
113. The Secretary, Utkal Mining & Industrial Association, Gandhi House, 16, Ganesh Ch. Avenue, Calcutta-13.
114. The Secretary, Vanaspati Mfrs., Association of India. Scindia House, (5th Floor) Fort Street, Opp. G. P. O., Bombay.
115. The Secretary, Vidarbha Chamber of Commerce, Rajasthan Building, Akola.
116. The Secretary, Western India Chamber of Commerce, 232-234, Kalbadevi Road, Bombay.
117. The Secretary, Western India Minerals' Asson., Killick Building, Home Street Bombay.
118. The Secretary, Western U P. Chamber of Commerce, Pooran Chand Building, Bombay Bazar, Meerut Cantonment.
119. District Bar Association, Alipur.
120. Federation Indian Chambers of Commerce and Industry, 28, Ferozshah Road, New Delhi.

APPENDIX V

CHAMBERS OF COMMERCE AND ASSOCIATIONS WHO HAVE SUBMITTED MEMORANDUM

1. Bharat Chamber of Commerce, Calcutta.
2. Bengal National Chamber of Commerce, Calcutta.
3. Indian Chamber of Commerce, Calcutta.
4. Calcutta Stock Exchange.
5. Indian Merchants, Chambers, Backbay Reclamation, Bombay.
6. Madras Centre of Indian Bank Association, Madras.
7. Andhra Chamber of Commerce, Madras.
8. Madras Chamber of Commerce, Madras.
9. South Indian Chamber of Commerce, Madras
10. European Chamber of Commerce, Madras.
11. Indian Banks Association, Bombay.
12. District Bar Association, Alipur.

